



EUROPEAN CENTRE  
FOR  
MINORITY ISSUES

# **IMPLEMENTING THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

**FLENSBURG, GERMANY  
12 TO 14 JUNE 1998**

**ECMI Report #3  
August 1999**

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**European Centre for Minority Issues (ECMI)**

**Deputy / Acting Director:** François Grin

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Protection of National Minorities**

María Amor Martín Estébanez and Kinga Gál

Flensburg, Germany  
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## **PREFACE AND ACKNOWLEDGEMENTS**

On 10 November 1994, after several years of protracted discussions, the Committee of Ministers of the Council of Europe adopted the Framework Convention for the Protection of National Minorities. This Convention is inspired by the Copenhagen Document of the Conference on Security and Co-operation in Europe (CSCE, now OSCE) of 1990 which again was a result of the changes triggered off by the events of 1989 in Eastern Europe. What the Copenhagen Document had put into political declarations of intent, the Framework Convention tried to cast into legal terms: to strengthen the rights of national minorities *vis-à-vis* the state in general and central governments in particular.

Due to a multitude of compromises between diverging views of the governments of the member states of the Council of Europe, the Convention is not wholly satisfactory, yet probably the best one could get. It resembles a very wide-meshed net which contains a great number of large holes. Each government which intends to slip through will no doubt succeed. It is at the same time, however, exactly this high degree of vagueness in the Convention's wording which leaves room for interpretation in a more positive direction. For example, there is no strict distinction between "traditional national minorities" and so-called "new minorities", and no nexus between citizenship and "national minority" is defined.

The Framework Convention entered into force on 1 February 1998 after having been ratified by twelve member states. Immediately afterwards, the procedure to nominate members for an Advisory Committee tasked to monitor the implementation of the Convention was initiated. In order to facilitate the difficult work of this newly-emerging monitoring mechanism, the Danish-German European Centre for Minority Issues (ECMI) held the international conference "Implementing the Framework Convention for the Protection of National Minorities" in Flensburg, Germany, on 12-14 June 1998. This conference brought together members of the Advisory Committee, officials of the Council of Europe, representatives of NGOs dealing with interethnic relations, international experts in the field of minority issues and, above all, experienced practitioners from monitoring mechanisms of other international conventions and treaties.

The idea to organize such a forum for an intense exchange of views stemmed from Ole Espersen, Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities, who is a member of the ECMI Advisory Council. It was also he who had suggested that such a conference should produce a set of recommendations to be

forwarded to the Committee of Ministers of the Council of Europe, to its Parliamentary Assembly and, in particular, to the Advisory Committee in charge of monitoring the implementation of the Convention.

Accordingly, among the conference participants were some of the newly appointed members of this body: Mirjana Domini (Croatia), Rainer Hofmann (Germany), Marju Lauristin (Estonia), Alan Phillips (United Kingdom), and Jozef Šivák (Slovakia). That ECMI had a lucky hand in inviting particularly these Committee members was proven soon after the conference by the nomination of ECMI Board Member Rainer Hofmann as the President of the Advisory Committee and Alan Phillips as First Vice-President.

ECMI is particularly obliged to Ole Espersen for his immense input into the conference including a thought-provoking key-note speech; to Rainer Hofmann for his invaluable advice before, during and after the conference; to Alan Phillips of the Minority Rights Group International and Jørgen Kühl of the Danevirke Museum in Dannewerk for two intriguing after-dinner speeches; to Patrick Thornberry of Keele University for steering the participants through what was initially a very rough draft set of recommendations but which with his decisive help was turned into a more streamlined text adopted by the participants; and to former ECMI Programme Coordinator Christine Pearce-Jahre who skilfully directed the organization and the logistics of the conference.

Finally, there are three more persons to whom a special thanks is extended: Erik Jensen, Headmaster of the Danish Duborg Skolen in Flensburg, generously granted the possibility to hold the first day of the conference in the impressive Festivity Hall of his famous school; María Amor Martín Estébanez of the Centre for Socio-Legal Studies at the University of Oxford who agreed to write this report; and—last but not least—ECMI Research Associate Kinga Gàl who over more than a year carefully planned, meticulously prepared, professionally carried through and critically evaluated what was actually “her” conference.

The present report reflects the presentations and discussions at the conference. ECMI takes full responsibility for the report since it has not been reviewed by the conference participants. It goes without saying that not all opinions presented in the report coincide with the views of ECMI.

By the summer of 1999, when this preface was written, five out of the 41 member states of the Council of Europe have not even signed the Framework Convention, among them two EU and three NATO countries. At the same time when NATO has just completed its first armed out-of-area intervention aiming at safeguarding the human rights of an oppressed national minority, it seems appropriate that the alliance

should also pay attention to the situation *inside* its member states. And at a time when East European applicants to the EU are feverishly implementing the 80,000-page *acquis communautaire*, the EU with good reason can be expected to implement the Framework Convention in *all* of those states which are already members. Avoiding double standards in such a sensitive issue as the protection of national minorities is crucial for the credibility of a multilateral organization working towards the integration of Europe.

Stefan Troebst

ECMI Director 1996-1998

Leipzig, Germany, July 1999

## INTRODUCTION

Subsequent to the historic events of 1989, the issue of protecting and promoting the distinct identity of national minorities re-appeared on the agenda of the international community. This development resulted, *inter alia*, in the adoption of the 1992 *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* and increased activities of the *United Nations Working Group on Minorities*; in the adoption of the 1990 *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* and the establishment of the office of the CSCE/OSCE *High Commissioner on National Minorities*; and, within the Council of Europe, in the adoption of the 1992 *European Charter on Regional or Minorities Languages* and the 1995 *Framework Convention for the Protection of National Minorities*.

The Framework Convention entered into force on 1 February 1998. Shortly thereafter, the European Centre for Minority Issues (ECMI) took a most welcome initiative and convened an international conference on *Implementing the Framework Convention for the Protection of National Minorities* in Flensburg on 12 to 14 June 1998. Both the speeches held during the morning session and the lectures given during the afternoon session prompted most lively and open discussion of the key issues which are identified in this report. Among the participants were also some members of the Advisory Committee under the above-mentioned Framework Convention who had been recently appointed by the Committee of Ministers. For these participants, it was of particular relevance to be fully informed by members of other treaty bodies, such as *e.g.* the Human Rights Committee of the United Nations or the European Committee for the Prevention of Torture, about their experiences in implementing the respective treaty provisions.

From a practitioner's point of view, the major result of this conference consists of the so-called *ECMI Recommendations* drafted on the basis of the afore-mentioned discussion and reproduced in this report. They have had a significant influence on the work of the Advisory Committee; this applies in particular to the recommendations concerning "other sources of information" as is well reflected in the pertinent practice of the Advisory Committee. Thus, this international conference which brought together a large range of specialists in human rights issues, both scholars and practitioners, had a significant impact in "bringing the Framework Convention from paper to practice".

Therefore, ECMI is to be highly commended for its initiative to convene this conference. Moreover, it is to be hoped that the publication of this ECMI report

summarizing the main thrust of the arguments exchanged during the discussion and the recommendations will enable the general public interested in minority issues to be familiarized with the major legal and practical issues faced by the Advisory Committee during its task to monitor the implementation of the Framework Convention by the States Parties.

Rainer Hofmann

Professor of International Law, University of Kiel  
President, Advisory Committee under the Framework Convention for the Protection of  
National Minorities

Kiel, 16 July 1999

## **BACKGROUND**

The Framework Convention for the Protection of National Minorities of the Council of Europe is the first legally binding international instrument generally devoted to minority protection. It emphasises that this protection is an integral part of the protection of human rights.

As stated in the background of the Explanatory Report on the Framework Convention, the Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. However, only after the changes in Central and Eastern Europe at the beginning of the 1990s, the whole process of considering the protection of national minorities gained momentum. The Parliamentary Assembly of the Council of Europe played a leading role in this process by adopting several recommendations on this issue, such as Recommendation 1134 (1990), which contains a list of principles considered necessary for the protection of national minorities; or Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights. In 1991, the inter-governmental Steering Committee for Human Rights of the Council of Europe was given the task of considering the conditions in which the Council of Europe could undertake an activity for the protection of national minorities. This Steering Committee established a committee of experts, which was required to propose specific legal standards in this area.

Following the decisions taken by the Vienna Summit of Heads of State and Government (8-9 October 1993) to “draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities”, the Committee of Ministers established an ad-hoc committee in order to draft the Framework Convention. The Ad Hoc Committee for the Protection of National Minorities (CAHMIN) consisted of experts designated by each of the member States of the Council of Europe with the mandate to elaborate a draft of the Framework Convention. During the drafting, they ought to transform the political commitments of the Copenhagen and other documents of the Organization for Security and Co-operation in Europe (OSCE) into legal obligations. The Ad Hoc Committee started its drafting work in January 1994 and completed it in October 1994.

The Framework Convention for the Protection of National Minorities was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994. It was opened for signature on 1 February 1995 and entered into force on 1 February 1998 following the required number of ratifications (12). The Convention has been signed so far by 36 member states of the Council of Europe, as well as by Armenia

as a ‘non-member’ State<sup>1</sup>, and ratified by 26 member states (data as of 4 June 1999). Several European Union (EU) countries such as Belgium, France, and Greece have not ratified the Convention so far. Other countries, such as Bulgaria, Denmark, Estonia, Germany, Switzerland and the Former Republic of Macedonia have ratified the Convention with a declaration introducing restrictive interpretations of the term ‘national minorities,’ which has not been defined in the Framework Convention.

The Convention contains mostly programme-type provisions concerning the rights of minorities which leave the States Parties a measure of discretion in the implementation of the objectives enshrined, through national legislation and governmental policies. Thus, the success of the Convention depends to a large extent on the monitoring of its implementation.

The Framework Convention provides that the Committee of Ministers of the Council of Europe shall monitor the implementation of the Convention and will be assisted in this task by an Advisory Committee (arts. 24-26). As a result, the Committee of Ministers adopted on 17 September 1997 in its Resolution (97) 10 the rules on the monitoring arrangements under Articles 24 to 26 of the Framework Convention. According to these rules, the Advisory Committee is composed of a minimum of 12 and a maximum of 18 ordinary members. The members have to be recognised experts in the field of minority protection and have to serve in their individual capacity, be independent and impartial. The duty of the Advisory Committee is to examine the State reports, prepare an opinion on the measures taken by the State Party and forward it to the Committee of Ministers. The Committee of Ministers will take the final decisions in the form of conclusions, and, where appropriate, will adopt recommendations addressed to the State Party concerned. The recommendations, conclusions of the Committee of Ministers, as well as the opinion delivered by the Advisory Committee will be made public jointly.

By June 1998, the Committee of Ministers had appointed the members of the Advisory Committee, and on 30 September 1998 adopted the ‘Outline for Reports to be Submitted Pursuant to Article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities’. The aim of this outline is to facilitate both the work of the Committee of Ministers and of the Advisory Committee, as well as the work of those (States, NGOs, etc.) entitled to provide information under the Framework Convention monitoring mechanism.

The Advisory Committee has elected its presidency, and on 29 October 1998 adopted its rules of procedure. The President of the Committee is Professor Rainer Hofmann (German), the first Vice-President Mr. Alan Phillips (British) and the

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<sup>1</sup> The possibility of non-member states to sign and to accede to the Convention is provided by Articles 27 and 29 of the Framework Convention.

second Vice-President Mr. Gáspár Bíró (Hungarian). The first state reports were due on 1 February 1999 (one year after the entry into force of the Framework Convention) and were received by the Committee with some delay during the first half of 1999. According to the Outline for Reports, each report must consist of two parts, and be submitted in one of the official languages of the Council of Europe (English or French) as well as in the original language. (For further details see the Outline for Reports included in the Appendix).



## **I. SUBSTANTIVE ASPECTS OF THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION**

During the two days of the conference complex issues on the interpretation and implementation of the Framework Convention were addressed. The legal status, as well as the international legal context in which the Convention operates, and which serves as a basis for the interpretation of the Framework Convention were discussed in depth.

As the Convention contains mostly programme-type provisions, the content of the Convention and its interpretation raised interesting questions and generated a lively debate. Several articles of the Framework Convention need clarification, and also the question of the subjects protected is very controversial. Tensions arise as a result of the tendency of the State to specify normatively those to be considered as a minority and the tendency of members of the group to self-identification. As the Framework Convention does not contain a definition of the term ‘national minority’, several countries have taken the opportunity to introduce a definition of what they consider to be minorities within their territories in the form of declarations or reservations to the Convention.

### ***I.1 THE LEGAL STATUS OF THE FRAMEWORK CONVENTION***

A participant stressed the high profile which the Framework Convention has acquired as the first legally binding international instrument on the protection of minorities. He recalled that in the Declaration of the Vienna Summit of Heads of State or Government of the Member States of the Council of Europe held in October 1993, awareness was

*The Framework Convention  
is a legally binding  
international instrument on  
the protection of minorities*

expressed of the fact that the protection of minorities is an essential element of stability and democratic security in Europe. The Summit decided that the Council of Europe should work on the establishment of legal commitments concerning the protection of national minorities.<sup>2</sup> It also instructed the Committee of Ministers of the Council of Europe to engage in the drafting of a framework convention specifying the principles which contracting States commit themselves to respect, in order to ensure the protection of national minorities.<sup>3</sup>

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<sup>2</sup> The Summit confirmed the determination of the member States of the Council of Europe to implement fully the commitments concerning the protection of national minorities contained in the Copenhagen and other documents of the CSCE (now known as the Organization for Security and Co-operation in Europe - OSCE). They also considered that the Council of Europe should apply itself to transforming, to the greatest possible extent “these political commitments into legal obligations”.

<sup>3</sup> The Summit also instructed the Committee of Ministers of the Council of Europe to begin work

Then, the participant recalled that the drafting process of the Framework Convention had lasted one year only. This contributed to explain the insufficiencies of the text. Such insufficiencies could question the validity of the statement that the Framework Convention constitutes the first legally binding instrument concerning minority protection. He also emphasised the need to analyse whether the Framework Convention is really a binding instrument and what are its positive effects, as well as its weaknesses.

With regard to the general content of the Framework Convention, he pointed to the fact that the governments of the member States were aware of the weaknesses of the Framework Convention. This is illustrated by paragraph 11 of its Explanatory Memorandum. This paragraph indicates that the Framework Convention contains mostly programme-type provisions setting out objectives, which the parties undertake to pursue.<sup>4</sup> This would raise doubts about whether the Framework Convention does not constitute in fact a mixture of law and politics. If difficulties in relation to the implementation of the Framework Convention were to arise at the international level, recourse could be made to consider the Framework Convention provisions as programme-type statements, and not to be considered as law.

With regard to individual aspects of the Framework Convention, he pointed to concrete articles, which pose problems of interpretation. He mentioned in particular Articles 10.2. and 11.3. In accordance with these articles, the States concerned will have the prerogative to determine the conditions under which the Framework Convention is applied.

*Is the Convention  
a mixture of law  
and politics?*

For another participant, however, the variety of the sources of international law should be borne in mind, since they are not all structured as in the case of domestic law. The concept of 'soft law' illustrates this diversity and variety of legal sources. Politically binding commitments can lead to State action, and also norms containing a programme of action require to be implemented seriously. Thus, no sharp distinction exists between the different types of norms through which the States undertake their international commitments.

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on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing the individual rights, in particular for persons belonging to national minorities. Such work is suspended at the time of writing, as a result of the difficulty for States to find a text they could agree on.

<sup>4</sup> This paragraph also indicates that these provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account.

Another participant also emphasised the programmatic nature of the Framework Convention. He singled out Articles 3.1 and 3.2 as well as Article 20. The Advisory Committee will have to address the question of whether the Framework Convention is self-executory or not. In some countries, the European Convention on Human Rights is a self-executory instrument.

In relation to this latter question, another participant referred to the need to look into the language of the international text in question in order to see whether the conditions exist for its direct application. The Framework Convention has been referred to as directly applicable in the bilateral treaties signed by Hungary with the Slovak Republic and Romania, giving rise to an interesting source of jurisprudence.

## ***1.2 THE INTERNATIONAL LEGAL CONTEXT IN WHICH THE CONVENTION OPERATES***

A conference participant started his presentation on 'Implementing the Framework Convention' by reminding the audience of the celebration this year of the 50th Anniversary of the Universal Declaration of Human Rights. He referred to the fact that neither the Charter of the United Nations, nor the Universal Declaration of Human Rights, make a reference to minorities. He also referred to the limited possibilities for minority protection provided under the European Convention on Human Rights. Article 14 of the European Convention contains a prohibition of discrimination on the basis of association with a national minority. However, this protection against discrimination only relates to the exercise of the other rights granted under the convention to everyone. The European Convention does not recognise any independent right to minorities.

He then focused his attention on the present possibilities and limits of international minority protection, pointing to the existence of new legal configurations, which build upon the prevailing political considerations. The texts of the European Charter for Regional or Minority Languages, the provisions contained in the OSCE documents, and the bilateral agreements concluded by some States testify of these new approaches at the regional level. Further, these good grounds for enthusiasm at the regional level should not let us forget about developments which have taken place at the universal level, including article 27 of the International Covenant on Civil and Political Rights,<sup>5</sup> the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the International Convention on the

*Possibilities and  
limits of international  
minority protection*

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<sup>5</sup> According to this Article: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Elimination of All Forms of Racial Discrimination, and the most recent developments with regard to the UN Working Group on Minorities.

Minority protection is an integral part of human rights protection and must be considered against this background. Article 1 of the Framework Convention points to the need to place this international instrument in a wider normative framework, in particular in terms of its interpretation. He recalled Professor Ian Brownlie's warning against the adoption of excessively specific and reductionist approaches to individual aspects of human rights protection, and the need to include the study of these aspects in a wider world of normative development.

Another important element in approaching the content of the Framework Convention is the linkage established between the Framework Convention and other international instruments, notably the European Convention on Human Rights.<sup>6</sup> National constitutions are becoming more receptive to international universal human rights norms. A family of international instruments now exists which serves as a basis for the interpretation of the Framework Convention. The Framework Convention, in accordance with its Article 22,<sup>7</sup> should provide for added value regarding minority protection. There is a need for co-ordination not only of the existing procedures but also of the normative regimes, so that when situations of overlap arise, the most adequate system prevails. If considered in different systems, technical principles can be applied to fit into normative harmonisation and co-ordination.

The Framework Convention seems to formulate rights in rather remote language and to hand out the responsibility for their concretization to governments. Similarly, this text falls short in granting group rights. The Framework Convention needs to be supplemented by the other human rights related activities of the Council of Europe, including those relating to racism and xenophobia; education; confidence building measures; and culture of human rights, which deal with specific sources of minority oppression which necessitate specific redress. There exists a common responsibility to make the Framework Convention work.

*Other international instruments  
as a basis for the interpretation  
of the Convention*

In relation to the question of the wider normative framework in which the standards established by the Framework Convention operate, a participant raised the issue of the different levels of commitment established in the various normative texts. As an example, he mentioned the field of minority education and referred in particular to the

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<sup>6</sup> See articles 19 and 23 of the Framework Convention.

<sup>7</sup> Article 22 reads as follows: "Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party".

provisions contained in the Copenhagen Document adopted in 1990 in the framework of the OSCE. He referred to the fact that the existence of various applicable provisions will confront the Advisory Committee with specific challenges when dealing with particular cases, as there will be a problem of reconciliation of the existing standards.

Another participant mentioned that in 1990 there was a political climate, which allowed for the forward position of the OSCE at that time. Even after one year only, this forward position had already changed, as evidenced at the OSCE Geneva Meeting of Experts on National Minorities.

A participant stated that a long list of international instruments relevant to minority protection had been adopted since 1990, and outlined, in particular, the relevance of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, also known as OSCE Copenhagen Document. He referred to the fact that, when dealing with the minority question in Europe, it is necessary to bear in mind that also in Western Europe there are minority questions to be resolved.

Finally, another participant indicated that, in spite of the existence of various texts, it is possible to speak of the existence of a 'common law' or skeleton of principles built upon the common ground maintained by the various texts. The value-added principle should be applied, and pointed out that there is no need for the Advisory Committee to act in a conservative way in this connection. It is not only a matter of reconciliation of the various texts on minority rights but also, and in particular, with the European Convention on Human Rights. A great deal of experience in dealing with different sources already exists, but the need for adopting flexible approaches with different sources of inspiration subsists. All norms are simultaneously valid, and there is no need to restrict any particular right.

### ***1.3. THE INTERPRETATION AND CONTENT OF THE FRAMEWORK CONVENTION***

According to one of the conference participants, the same qualification which applies to the European Convention on Human Rights, considered as a 'living' instrument, to be adapted to prevailing conditions, applies also to the Framework Convention. There is a need to make sense both of the words and world in which the Framework Convention operates, as the Framework Convention is only one member of a larger family of international human rights instruments. The canons of interpretation should not only serve as a parameter for detecting lack of coherence and de-construction, or for the provision of meanings only by those holding a concrete responsibility to do so. The international conventions are not private, but public documents, and as such should be subject to public interpretation.

As to the question of determining what the actual meaning of the text of the Framework Convention is, one of the conference participants pointed to the existence of several canons of interpretation, and in particular those provided under the Vienna Convention on the Law of Treaties, especially under Articles 31 and 32. These articles refer, *inter alia*, to a) subsequent practice in the application of the treaty, which establishes the agreement of the parties regarding its interpretation, and b) supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion. Thus, with time, subsequent practice can provide guidelines for the interpretation of the Framework Convention, together with its preparatory work.

As appropriate criteria of interpretation of the provisions of the Framework Convention, another participant also emphasised the importance of other international texts, and mentioned in particular the documents of the OSCE, and the Recommendations of the Parliamentary Assembly of the Council of Europe. According to this participant, since most of the States parties to the Framework Convention are also bound by other international instruments, these should be used in conjunction, to arrive to new results.

The importance of making the Framework Convention work through procedures at the domestic level was stressed by another participant. A correct implementation of the Framework Convention calls for the use of normative imagination and fair procedures by the bodies responsible for its implementation, so that they can, *inter alia*, deal with sometimes contradictory information. Also the practice developed in a concrete case can modify behaviour in the long run.

With regard to the individual/collective character of the rights recognised, the individualisation of minority rights through the terminology employed in the

<p><i>Individual or collective rights?</i></p>
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Framework Convention does not prevent their collective exercise. According to Article 3.2: 'Persons belonging to national minorities may exercise their rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others'.

Another terminological question with strong implications in the field of policy and which requires clarification is the use of the terms 'integration' and 'assimilation'. According to Article 5.2 of the Framework Convention: 'Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.' However, in ILO Convention 107 'integration' actually means 'assimilation'. Thus, there is a need to develop a lexicon of these terms.

Similarly, the concept of group representation also needs to be clarified. An important element addressed by Article 12 of the Framework Convention relates to the concept of 'mutual learning' by minorities of the culture, history, language and religion of the majority and *vice-versa*.

The Framework Convention does not recognise a right to autonomy, but it does recognise the idea of a minority area in which the enhancement of rights based on a common territorial space and a common cultural and linguistic tradition is made possible. This is enshrined through the recognition of 'shared spaces' for minorities to express their identity and to define the character of the area in which they live. The content of Article 16 is a reflection of this approach.<sup>8</sup> It is for this reason that the Convention foresees the possibility that government demarcations of minority areas may be detrimental to the exercise of the rights granted under the convention.

The Framework Convention does not contain a reference to the question of the loyalty of minorities to the State where they live, but it does contain a reference to the duty to respect national legislation, a duty common to all persons living in the State.

The Framework Convention defines patterns of appropriate State action concerning the protection of minority rights. This includes the possibility to receive education in the minority language, rather than just to have access to the teaching of the language. This is in contrast with the doctrine established under the European Convention on Human Rights, which does not foresee such a possibility. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities<sup>9</sup> may provide a useful source of guidance in this context.

<p><i>Escape clauses in the Convention need clarification</i></p>
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Similarly, there are several Articles of the Framework Convention, which need clarification, as they contain escape clauses. The Advisory Committee should be encouraged to find an adequate lexicon and maintain a consistent practice. The determination of what can be considered as appropriate avenues of implementation of the Framework Convention should be the object of general consensus, rather than resting with one particular State only.

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<sup>8</sup> According to Article 16 of the Framework Convention: “the Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention”.

<sup>9</sup> These recommendations have been published by the Foundation on Inter-Ethnic Relations, a non-governmental organization which supports the activities of the OSCE High Commissioner on National Minorities.

Another participant referred to the need to establish the concrete content of the rights and principles contained in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>10</sup> and referred to the commissioning of working papers which are presented at the meetings of the UN Working Group on Minorities. These papers have provided the working group with information on specific issues related to the interpretation of the articles of the Declaration, such as education in and instruction of on the minority language, political participation, the implementation of minority rights, or the value of bilateral treaties as possible solutions to minority questions. She expressed the interest of the Working Group in finding out, through the comments and opinions of NGOs what the rights contained in the Declaration actually entail. In addition, the Working Group is trying to identify and develop a catalogue of best practices, or positive measures, which have

*Towards a catalogue  
of best practices*

been adopted by States to protect and promote the rights of minorities. Such a catalogue would give an overview of the content and scope of the rights protected, including what kind of normative approaches have been offered by some States which can serve as a model for others. Best practices discussed have included for example, ways in which minorities can effectively participate in public life and how they can be ensured effective political participation. Allocating a fixed number of seats in Parliament to minorities has been mentioned as a possibility in this connection.

Finally, another participant referred back to the need to determine the substance of the particular rights granted to minorities, the specific holders of these rights and the question of their specific situation. He indicated that as an initial step in the search for an explanation, there could be the possibility for adopting an interpretation of these concepts. He proposed that the UN Working Group on Minorities elaborate a document providing for an interpretation of the UN Declaration.<sup>11</sup>

#### ***1.4 THE QUESTION OF THE SUBJECTS PROTECTED***

A conference participant discussed the fact that no definition had been given of membership of a national minority in the Framework Convention. He referred to the relation between the existence of a national minority and the ethnic, linguistic or cultural elements present in minority groups. The question emerges of who is responsible for recognising the existence of a given minority. Tension arises as a result of the tendency of the State to specify normatively those to be considered as a minority

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<sup>10</sup> Henceforth, UN Declaration.

<sup>11</sup> Asbjørn Eide, Chairman Rapporteur of the UN Working Group on Minorities prepared the working paper “Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities” for the fourth session of the Working Group, in May 1998.



and the tendency of the group to self-assertion and of its individuals to self-identification. The prevailing legal doctrine, which dates back to the time of the League of Nations, establishes that the existence of a minority is a question of fact and not a question of law. This view is also maintained in the General Comment on Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of the Human Rights Committee.<sup>12</sup> The commitments established in Article 2 of the Framework Convention, together with specific parameters of belonging, should lead to uphold such a principle also in the case of the Framework Convention.

*The difficult question of definition*

He also pointed to the fact that the question of definition is often difficult when dealing with human groups. ILO Conventions 107 and 169 provide a definition of the groups they are concerned with. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities does not contain a definition of the persons protected, and the provision of instant solutions to this question does not constitute an insurmountable problem. On the basis of dialogue, it is possible to establish a definition of the groups with which the convention is concerned. In this regard, attention should be paid to the approaches being adopted by the Human Rights Committee<sup>13</sup> in connection with the provision of individual state-based, governmental definitions. As a way of example, the declaration made by France to the effect that no minorities exist in the country was considered as a reservation by the Human Rights Committee, although the Committee also expressed its view that it is unable to agree that France is a country in which no ethnic, religious or linguistic minorities exist. According to authoritative opinions, such as that of Rosalyn Higgins, the declaration made by France would not constitute a reservation but an interpretation of the International Covenant on Civil and Political Rights. Thus, it is for the Human Rights Committee to challenge such an interpretation and establish a consensus definition. Similarly, the principles established under the European Convention on Human Rights are of direct application when interpreting and implementing the Framework Convention.<sup>14</sup>

According to another participant, the fact that the Framework Convention does not contain a definition of the term 'national minority' does not give the individual States the right to build their own definition. Rather, a decision on this regard should lie with the organisations and institutions responsible for monitoring the implementation of the Framework Convention, and not by those individual States bound by it. The approach adopted by some Council of Europe States in this regard may lead to further

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<sup>12</sup> According to paragraph 5.2 of General Comment 23 of the UN Human Rights Committee: "The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria".

<sup>13</sup> See Section II.1.1 below.

<sup>14</sup> See articles 19 and 23 of the Framework Convention.

difficulties in the future.<sup>15</sup>

However, he also indicated that due account should be taken of the fact that, in all the States parties of the Framework Convention, there is a need to be a citizen in order to enjoy the rights granted under the convention.<sup>16</sup> The concession of citizenship is a State prerogative, and in some countries access to citizenship remains very difficult. This is due, *inter alia*, to lengthy legal residence requirements, or to the fact that some groups of persons living in the country are expressly excluded from access to citizenship. Thus there is a need to ease naturalisation requirements so that access to protection under the Framework Convention can be facilitated.

In relation to the question of the definition of 'national minority' another participant stated that even if no such definition had been included in the Framework Convention, the Parliamentary Assembly of the Council of Europe has provided definitions of this term.

A participant regretted that an express reference to groups other than 'national' minorities had been omitted in the text of the Framework Convention, when this had not been the case for the UN Declaration. For the Framework Convention he would have preferred the formula used in Article 27 of the ICCPR, as there is not a clear knowledge of what a national minority exactly is.

Other participant also referred to the particular importance of Roma and Gypsy questions, and indicated that some of the recommendations made by European Commission against Racism and Intolerance in relation to the police have been welcomed by the Roma community. He expressed his hope for a whole new approach to the Gypsy problems in Europe, rather than just focusing on solutions to small problems. He pointed to the need for both the Roma and the majority communities in the State to get into a full new vision on how to strive for a better future. He also pointed to the need for a higher level of integration between the various cultures and religions in Europe, and referred to the fact that practical handbooks had been published in this field, concerning for example the Sinti and Roma communities in Germany.

*Roma and Gypsy  
questions*

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<sup>15</sup>See section I.5 below.

<sup>16</sup>Note the different view in this regard held by other conference participants in the next section, I.5. In the view of the rapporteurs, the text of the Framework Convention does not contain any restriction by which the persons belonging to national minorities which may exercise and enjoy the rights and freedoms derived from the Framework Convention are only those who are also 'citizens' of the State.

## 1.5 THE ISSUE OF RESERVATIONS

A participant indicated that the countries which have been ratifying the convention, have been making use of so called 'statements' which actually limit its scope. On the basis of the fact that the Framework Convention does not contain a definition of the term 'minority' and that there is no agreement on such a definition, some countries have taken the opportunity to introduce a definition of what they consider as minorities within their territories. As a way of example, Denmark has only recognised the German minority in South Jutland as falling under the scope of the Framework Convention. Similarly, Luxembourg has excluded the existence of any national

*Declarations of individual States upon ratification of the Convention*

minorities on its territory, on the basis that a minority needs to be 'a group of people settled for numerous generations on its territory, having the Luxembourg nationality and having kept distinctive characteristics in an ethnic and linguistic way'.<sup>17</sup> The participant questioned whether it is reasonable and necessary to establish such definitions, as in accordance with the Vienna Convention on the Law of the Treaties, reservations are not permitted if they are incompatible with the object and purpose of the treaty.<sup>18</sup> Although in the case of the Framework Convention the term 'reservation' has been avoided, the 'statements' adopted can actually act in a stronger way than 'reservations', and may prove harder to withdraw than a reservation.

Although from the perspective of international law the Framework Convention constitutes a weak text, from the perspective of minority protection it constitutes an important first step. As a revision of the present text is now out of question, those countries, which ratify the convention, should do so without using limiting statements. It is preferable that States wait for a year or two before ratifying the convention rather than ratifying with limiting statements in order to get its text speedily passed through parliament. In addition, it should be underlined that the withdrawal of statements already made remains a valuable option.

According to another participant, the declarations and reservations made by individual States upon ratification of the Framework Convention have served to explain what these States understand by the term 'national minority'. Some States have established citizenship as a pre-requisite. This, in spite of the fact that in the General Comment by the Human Rights Committee on Article 27 of the International Covenant on Civil and Political Rights<sup>19</sup> it was indicated that there is no need for persons who belong to a

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<sup>17</sup>See URL <http://www.coe.fr/tablconv/reservdecl>.

<sup>18</sup>See Article 19 (c) of the Vienna Convention on the Law of the Treaties.

<sup>19</sup> Human Rights Committee, General Comment No.23 (Fiftieth Session, 1994). See Report of the Human Rights Committee, Vol.I, GAOR, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 107-110.

group and who share in common a culture, a religion and/or a minority language to be citizens in order to enjoy the protection provided under that article.<sup>20</sup> He wondered whether the Advisory Committee or the Committee of Ministers would deal with this issue. Some States have also excluded migrant workers.

Another participant explained that in the case of reservations *strictu sensu*, only those which are not of a general nature or not incompatible with the purpose of the treaty are allowed under international law. However, the official statements made by the States in connection with their ratification of the Framework Convention can be more relaxed, and considered as interpretative declarations or unilateral understandings.

In fact, there is no need for recognition by the government concerned for the existence of minorities and their entitlement to protection. The view of the Finnish government has been not to make a limiting statement at the time of ratification of the Framework

*Should there be a list of minorities entitled to protection?*

Convention because the existence of minorities is a matter of fact. One of the main problems posed by drawing a list of minorities entitled to protection under the Framework Convention is the need to periodically reconsider the content of such a list. The participant referred to the existence of an obligation to update the content of such a list regularly. He also referred to the need to act in a relaxed way in relation to the adoption of statements of this kind.

Another participant supported the validity of the previous statement, and indicated that the argument it contained was also useful in understanding why it had not been appropriate to include a definition of minorities in the text of the Framework Convention.

Another participant referred more generally to the problem related to the practice of States aiming at the restriction of international treaty obligations. Many States have formulated reservations in order to evade any obligation to adjust their domestic law to the international standards. The Human Rights Committee<sup>21</sup> has tried to address this issue in its General Comment No. 24 of 1994.<sup>22</sup> The United States, the United Kingdom and France have clearly refused to follow the Committee on this path. The International Law Commission of the UN has presented a draft concerning reservations to multilateral treaties, in particular human rights treaties, so the discussion on this issue continues. There are also some specific questions, such as how to deal, for example, with States' declarations or reservations indicating that no minorities exist on their territory, and that therefore Article 27 of the ICCPR cannot be applied for factual reasons. The Human Rights Committee has interpreted the

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<sup>20</sup> See paragraph 5.1 of the General Comment.

<sup>21</sup> See Part II, Section II.1.1 below.

<sup>22</sup> U.N. Doc. CCPR/21/Rev.1/Add.6 (1994)

declaration to this effect made by France as a reservation and, therefore, the Committee has established that individual complaints regarding violations of Article 27 by France are inadmissible. In the comments of the Human Rights Committee on the third French report under the reporting procedure established by Article 40 of the ICCPR, the Committee has expressed its view that it is “unable to agree that France is a country in which there are no ethnic, religious or linguistic minorities. The Committee wishes to recall in this respect that the mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a country, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group”. Similar statements have been made with regard to Senegal and Uruguay.

Additional problems are posed by the following practices. Germany did not issue a reservation regarding Article 26 of the ICCPR.<sup>23</sup> This was probably in the understanding that this provision would be interpreted by the Human Rights Committee in a similar way as Article 14 of the European Convention on Human Rights. That would have meant that the prohibition of discrimination contained in Article 26 would only apply in connection with other rights protected under the ICCPR. However, and surprisingly perhaps, the Human Rights Committee considered the scope of Article 26 of the ICCPR in a wide sense, interpreting the right it contains as an independent right on its own. Germany felt obliged to ratify the Optional Protocol to the ICCPR only with the reservation that the Human Rights Committee would lack the power to consider communications from an individual complaining of a violation of Article 26. This is a tool to evade the consequences of the jurisprudence of the Human Rights Committee in concrete cases and omissions incurred when ratifying the ICCPR.<sup>24</sup>

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<sup>23</sup>According to this Article, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

<sup>24</sup>According to the same participant still more disturbing has been the reaction of Trinidad and Tobago to the jurisprudence of the Juridical Committee of the Privy Council which has held that in any case in which an execution was to take place more than five years after the death sentence, there would be strong grounds for believing that the delay was such as to constitute inhuman or degrading treatment or punishment. Since the international complaints procedure under the American Convention on Human Rights and the ICCPR, including its Optional Protocol, would take too long a time and therefore frustrate the possibility to carry through the death sentence, Trinidad and Tobago withdrew its ratification of the American Convention and denounced the Optional Protocol to the ICCPR on 26 May 1998. On the same day, Trinidad and Tobago re-acceded to the Optional Protocol with reservation to its Article 1 to the effect: “that the Human Rights Committee shall not be competent to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his

## II. PROCEDURAL ASPECTS OF THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION

A conference participant pointed to the fact that the Framework Convention has been provided with a weak monitoring procedure. According to Article 24 of the Framework Convention, the Committee of Ministers of the Council of Europe shall monitor the implementation of the Framework Convention by the contracting parties.

Another participant, however, highlighted the important role that can be played by the Advisory Committee established under Article 26 of the Framework Convention, and indicated that its competencies will be defined not only by the rules adopted by the Committee of Ministers in Resolution (97) 10, but also by the rules of procedure to be

*How to overcome a weak monitoring procedure of the Convention?*

defined by the Advisory Committee itself. The Advisory Committee will thus devise a regime of guidance for governments and of relations with inter-governmental organisations. It will decide on whether to take active or passive stands of criticism/condemnation or constructive suggestions, or on the establishment of various types of dialogue with different countries. Important aspects to be taken into consideration will be: the Advisory Committee's access to sources of information and level of contacts with NGOs; the location of its meetings and their confidentiality; as well as the relations of the Advisory Committee with the Committee of Ministers.

The norms contained in the Framework Convention and its implementation procedure should not be considered as two separate entities, but rather, both interpretation and procedure should be considered as constitutive elements of the implementation process. The participant indicated that also the practice developed in a concrete case could modify behaviour in the long run.

The procedural and operational aspects of the work of several human rights international monitoring mechanisms which could be relevant to the monitoring activities under the Framework Convention, and in particular to the work of the Advisory Committee, were presented during the conference.

Some of these monitoring mechanisms have been established through the text of an international treaty. The monitoring mechanisms discussed during the conference included those established under the ICCPR, the United Nations Convention against

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sentence or the carrying out of the death sentence on him and any matter connected therewith". Trinidad and Tobago also states: "Accepting the principle that States cannot use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Trinidad and Tobago stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant".

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other mechanisms analysed have been established through other types of international instruments, such as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or the Declaration adopted at the Vienna Summit of Heads of State or Government of the member States of the Council of Europe.

Similarly, whereas some of these monitoring mechanisms are based on a State reporting procedure, such as in the case of the Framework Convention, others are based either on an inter-State or on an individual or on a complaints system, or on *ex-officio* investigation. Finally some other instruments concerning minority protection are subject to a certain level of monitoring although they have not expressly previewed a monitoring procedure.

*General features of  
different international  
monitoring mechanisms*

The pages which follow, will focus first on the general features of these international monitoring mechanisms and the instruments under which they have been established, as depicted during the conference. Secondly, those aspects of the various monitoring procedures relevant to the monitoring procedure established under the Framework Convention highlighted during the conference will be presented, along the lines of the type of mechanism provided. Finally, the various suggestions concerning the adequate organisation and functioning of the Advisory Committee, including the various matters relevant to the Advisory Committee's work will be presented along the lines of the respective problem areas which emerged during the discussion.

## ***II.1 PRESENTATIONS OF RELEVANT INTERNATIONAL MONITORING MECHANISMS***

### ***II.1.1 TREATY BASED MECHANISMS***

One of the conference participants indicated that, in accordance with article 28 of the International Covenant on Civil and Political Rights (ICCPR), the States parties to this treaty established the Human Rights Committee. This Committee has been tasked with monitoring the respect for the rights enshrined in the Covenant, among them the right to life and not to be subjected to torture, the right to liberty and security of the individual, to liberty of movement, to equal treatment before the courts, to freedom of thought and religion, to hold opinions without interference and, last but not least, the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their own

*The Human Rights  
Committee*

culture or to use their own language.<sup>25</sup>

The Human Rights Committee is performing its monitoring task by three means:

-It has the competence to consider reports, which the States parties must periodically submit on the measures they have adopted in order to give effect to the rights recognised in the Covenant, and on the progress made in the enjoyment of those rights (Article 40 of the ICCPR).

- On the basis of special declarations, the Committee is competent to receive and to consider communications of a State Party which claims that another State Party is not fulfilling its obligations under the Covenant (Article 41 of the ICCPR).

- A State Party may accept the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant (a possibility provided for under the Optional Protocol to the ICCPR).

The Human Rights Committee generally holds public meetings but sometimes the meetings are closed, such as when dealing with communications from individuals, in

*Public and  
closed meetings*

designing the closing observations and corresponding recommendations in connection with the State reporting procedure, and during the discussions on procedures. It should be noted that the rules of procedure of the Human Rights Committee are drafted by the Committee itself and are not subject to the approval of any other superior body.

Although the wide substantive scope and procedural achievements of the ICCPR may seem impressive, in practice loopholes and deficiencies exist on all levels of the implementation of the Covenant, including at the procedural level. Some of the most relevant will be presented at a later stage.

A participant recalled that the member States of the Council of Europe had noted that the guarantee of compliance with Article 3 of the European Convention on Human Rights<sup>26</sup>, which is provided by the judiciary, reactive mechanism under the European Convention, could be supplemented by a non-judicial, pro-active mechanism, based on visits to various places of detention (this would include, *inter alia*, psychiatric hospitals).

Accordingly, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment does not contain substantive provisions on the question of torture, but its aim is to contribute to the protection of persons deprived of

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<sup>25</sup> This right is contained in Article 27 of the ICCPR. The article also refers to the right of these persons to profess and practise their own religion.

<sup>26</sup> According to this article “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.



their liberty against torture and inhuman or degrading treatment or punishment, on the basis of the activities of the European Committee for the Prevention of Torture (CPT). CPT provides co-operation and assistance to States through the elaboration of recommendations .

The Committee has already carried out 70 visits to 35 States. All member States of the Council of Europe, including Russia, are bound by the Convention.<sup>27</sup> The European

*The European Committee  
for Prevention of Torture*

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment does not constitute a programme for State action, but is a genuine convention setting a monitoring mechanism with wide powers, as the CPT can go where it wants, when it wants. Two hundred working days of visits are envisaged for the year 1999.

Another participant referred to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>28</sup> differentiating this international instrument from the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. He also differentiated between

*The UN Committee  
Against Torture*

the UN Committee against Torture, responsible for securing implementation of the provisions of the UN Convention Against Torture and other UN bodies which are responsible for dealing with the issue of torture, such as the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur on Torture, as well as the United Nations High Commissioner for Human Rights.

The UN Convention Against Torture was adopted on 10 December 1984 and entered into force on 26 June 1987. The participant explained that the UN Committee Against Torture (CAT) is responsible for securing the implementation of the provisions of the Convention in law and in practice. It is composed of 10 members elected by the States Parties for a four-year term. He established a parallel between the functions of CAT and those of the Advisory Committee of the Framework Convention. He referred, in particular to the reporting system which, in the case of CAT, is established under Article 19 of the UN Convention against Torture, and, in the case of the Advisory Committee, under paragraphs 24 to 26 of the Framework Convention. With regard to the inspection system established under paragraph 20 of the UN Convention against Torture and for which CAT is responsible, he referred to the fact that the establishment of a similar system in the case of the Advisory Committee remains an open question. Finally, a complaint system similar to that established under paragraph 22 of the UN Convention Against Torture does not seem to have been foreseen with regard to the Advisory Committee.

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<sup>27</sup> At the time of writing the member States of the Council of Europe are 40.

<sup>28</sup> Henceforth, 'UN Convention Against Torture'.

### II.1.2 NON-TREATY BASED MECHANISMS

According to a conference participant, as the UN Declaration is an international declaration, it is not a legally binding instrument, and the States have no obligation to apply the rights contained therein. So the question which follows is how can the international community encourage governments to provide information, and what other forms of pressure can be applied to ensure State compliance with its text.

The participant pointed to the existence of two mechanisms in the case of the UN Declaration. The first is based on State reporting to the UN General Assembly and the UN Commission on Human Rights. The General Assembly and the Commission on Human Rights have requested States to provide information to the UN Secretariat on

*The UN Working  
Group on Minorities*

how they have respected or applied the principles contained in the Declaration, in several resolutions. This information has been provided by the States through *notes verbales*. On that basis, reports to the Commission on Human Rights and to the General Assembly have been drawn up, and later discussed, in those fora. The participant indicated that there are grounds to expect that the information provided in these reports will be similar to that which will be provided under the Advisory Committee monitoring system.

The second mechanism is provided by the UN Working Group on Minorities, which is responsible for reviewing the implementation of the UN Declaration. The Working Group is composed of independent experts (as in the case of the Advisory Committee) who meet once a year for five days. The Working Group sessions are open to all, including governments, NGOs (no matter whether they have a recognised special status within the UN or not), minority representatives and scholars. Only by knowing conditions at the local level can the Working Group carry out its mandate effectively.

Another participant started his presentation referring to the experience of the Ombudsman against Ethnic Discrimination in Sweden, and of the international co-ordinating committees on human rights institutions of the UN. He explained that these human rights institutions are national human rights bodies which are statutorily

*The European  
Commission against  
Racism and Intolerance*

independent, and include both ombudsmen and human rights institutions. He indicated that, in Paris in October 1991, some basic principles concerning these institutions were developed at an international workshop organised by the UN Centre for Human Rights. These principles were further discussed by the Commission on Human Rights in 1992 and the General Assembly in 1993. They referred to the minimum requirements which should characterise this type of bodies, including their establishment by law, their independence from the government of the

State, their impartiality, and their role in the implementation of international standards at the national level. The UN High Commissioner for Human Rights has made this type of institutions one of its most important objects of concern, and indicated that to implement international human rights, the establishment of these institutions should be supported and strengthened.

The participant later focused his attention on the European Commission against Racism and Intolerance (ECRI) whose activity he was familiar with, particularly from the perspective of his position as a chairman. He pointed to the fact that ECRI had been established as a result of a decision adopted during the first Summit of the Council of Europe held in Vienna in October 1993, and it had started its work in March 1994.<sup>29</sup>

He indicated that dealing with the tasks and attending to the terms of reference of ECRI had not been easy: to take care of racism in Europe in a swift manner, on a concrete way and with no costs. To achieve this through the drafting of a convention establishing a monitoring system would not have been a swift method. Thus, a monitoring mechanism was put in place without the previous drafting of a convention. The mechanism lacked a detailed mandate with a clear delimitation of its specific competencies and activities, but at the same time these were not constrained by stringent rules.

## ***II.2. ASPECTS OF THE VARIOUS INTERNATIONAL MONITORING MECHANISMS RELEVANT TO THAT ESTABLISHED UNDER THE FRAMEWORK CONVENTION***

### ***II.2.1 TREATY-BASED MECHANISMS***

A participant indicated that, as to the State reporting procedure established under the ICCPR, four problems require special consideration.

1) The Human Rights Committee is in a rather ambivalent position. On the one hand, the effectiveness of the system suffers a great deal from the fact that the States Parties *State reporting procedures* do not comply with their reporting obligations in due time. This holds true both for the initial reports, which have to be submitted within one year of the entry into force of the Covenant, as well as for the subsequent, periodic reports. On the other hand, the Human Rights Committee has a backlog of reports waiting for examination. If all States would report on time, the system would collapse. 140 States have ratified the Covenant so far. The Human

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<sup>29</sup> See 'Declaration and Plan of Action on combating racism, xenophobia, antisemitism and intolerance', Appendix III to the Vienna Declaration of the Council of Europe Summit of Heads of State or Government of the member States of the Council of Europe, Vienna, 9 October 1993.

Rights Committee is not able to consider more than 15 or 18 reports per year at the utmost. Concerning those States which fail to report at all, the possibility could be foreseen of an examination of the human rights situation on the basis of the information which the Human Rights Committee is able to collect without the support of the State. Some treaty bodies favour this approach. However, for the Human Rights Committee, the possibility of adopting such an approach is still disputed for legal and practical reasons.

2) The value of the examination of State performance by the Human Rights Committee largely depends on the quality of the reports submitted. Many States do not describe the deficiencies of their human rights situation frankly, and in most cases the States do not address the realisation of their international obligations beyond the legislative domain. Often, no reference is made to the implementation of the rights contained in the ICCPR through the executive or judicial organs of the State. Frequently these *lacunae* cannot be overcome by means of a co-operative attitude on the side of the State's delegation during the oral dialogue in which the delegation and the Human Rights Committee engage.

3) Further, the time available for examining the State reports is limited. In order to deal with the large number of reports, the committee has limited the time of discussion with the State's delegation to one day, which in practice means six hours. This time often proves too short to establish a really constructive dialogue. The Human Rights Committee has tried over the last two years to streamline its procedure with some success. However, further reductions of the time available would render the whole endeavour meaningless.

4) Following the end of the Cold War, a considerable improvement has resulted from the possibility opened for the Human Rights Committee to address written concluding observations to the State party concerned. These concluding observations summarise the achievements of the State and the points of concern which remain, and which have been identified during the examination of the situation in the State. They also include the corresponding recommendations. These recommendations sometimes fail to be sufficiently precise, are formulated under heavy time pressure and do not always take up the most serious concerns. More important is the fact that the Committee has not yet developed a follow-up procedure. This can be considered as one of the major defects of the system. Once the discussions with the State have finished and the

<i>A follow-up procedure not yet developed</i>
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concluding observations have been sent to the State and have been published, no follow-up takes place until the consideration of the next report. In the meantime (usually five years or more) no exchange of views takes place. No mechanism has been established to ask for the implementation of the recommendations made in the previous review. Undoubtedly, some action must be taken in this connection. A

possibility would be, first to include in all the concluding observations a request for the State to report, after one year, on the steps that it has taken or intends to take in view of the recommendations of the Human Rights Committee. Secondly, a Sub-Committee could be created, consisting of three Human Rights Committee members entrusted with the duty to control the performance of the State in relation to this request and to report to the Human Rights Committee suggesting the necessary actions. NGOs which play, or should play in the future, an important role in the preparation of the State reports and of the relevant discussion in the Human Rights Committee, could also contribute to monitoring the realisation of the Committee's recommendations, including by exercising pressure on the government and publicising its approaches. Lack of publicity seems to be one of the most detrimental factors to the success of the whole system.

Another participant focused his attention on the reporting system established under paragraph 19 of the UN Convention Against Torture, which involves 105 States. Under this system the States parties must submit an initial report to CAT within one year after the entry into force of the Convention for the State party concerned. Thereafter, the States Parties must submit supplementary reports every four years. The possibility is also foreseen that CAT requests the submission of additional reports although this option is very seldom used.

He outlined that an important characteristic of this State reporting system is its transparency. He recalled that, according to paragraph 97 of the explanatory report on the Framework Convention, “the monitoring of the implementation of this Framework

*State reporting  
system should  
be transparent*

Convention shall, in so far as possible, be transparent. In this regard it would be advisable to envisage the publication of the reports and other texts resulting from such monitoring”. In the case of the UN reporting system under the UN Convention Against Torture, the meetings of CAT are public (and even broadcasted by BBC 2); the reports are also public and there is a big input from NGOs, through written material only, to the members of the Committee, which is also made public. Also the dialogue between CAT and the State party's delegation responsible for presenting the report to the Committee is public, as are the conclusions and recommendations of CAT,<sup>30</sup> which are included in the annual report of the Committee. He advocated transparency and publicity as he considered them very positive features of the State reporting system of CAT.

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<sup>30</sup> In accordance with Article 19 (4) of the Convention against Torture, CAT may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of the same article, together with the observations thereon received from the State Party concerned, in its annual report. If so requested by the State party concerned, CAT may also include a copy of the report submitted by the State party on the measures it has taken to give effect to its undertakings under the convention.

The same participant indicated that, as to the State communications procedure established under Article 41 of the ICCPR, only 45 States parties have made the declaration required under this article, and the Human Rights Committee has never received a communication of this type. Apparently, States do not feel inclined to use this mechanism, as they are afraid of its diplomatic implications which may place a burden on their international relations.

Another participant mentioned that the inter-State complaint system foreseen under article 21 of the UN Convention Against Torture has never been used either.

According to one participant, the individual communications procedure established under the Optional Protocol to the ICCPR is a particularly appropriate tool to ensure respect for the rights enshrined under the ICCPR. The victim has the best knowledge of the harm, which has been inflicted upon him/her. It is the holder of the right who should be able to claim the exercise of his/her right. 91 States have ratified the Optional Protocol so far, some of them introducing reservations, as already mentioned. The Committee has to deal with a growing number of communications. By mid-1997, 751 communications had been registered with respect to 54 States. Out of these

<i>Individual Complaints Procedures</i>
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communications, 154 became cases under consideration. Nowadays, the number of communications from Eastern European countries is increasing rapidly. It has taken some time for this to happen as a result of the requirement of the exhaustion of domestic remedies. Although the number of cases will not be as large as for the European Court of Human Rights, it will still be significant. In view of the very deplorable conditions in many respects which now exist, in particular with regard to police brutality, prison conditions and fair trial, such an expectation comes as no surprise.

This serves to introduce the problem of the Human Rights Committee's growing workload and the corresponding backlog. The Committee is able to forward its views on around 50 cases per year. This includes not only views on the merits, but also decisions on admissibility. Time could be saved if the States Parties would agree that the admissibility aspects are addressed together with the merits of the case. Still, the examination of the case needs sometimes up to three years. So, the Human Rights Committee is placed in the peculiar position of blaming States for trying persons with undue delay under Article 14, paragraph 3 (c) of the ICCPR, when the procedure before the Committee lasts for far too long. Pressure from the States Parties could be expected as a result.<sup>31</sup>

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<sup>31</sup> This especially concerns Jamaica and Trinidad and Tobago, which were afraid this would lead to their inability to execute death sentences. These States have given an ultimatum to the Committee, requiring that it ensure that all the communications from persons on death row would be dealt with expeditiously and completed within six months of their registration (in the case of Jamaica) and eight months (in the case of Trinidad and Tobago). The Committee rejected such pressure while stating its

As to the issue of implementation, the Committee is not a court, and does not take legally binding decisions, in contrast for example to the European Court of Human Rights. This, of course, does not contribute to facilitate the implementation of the rights established under the ICCPR. However, the fact that the views of the Committee do not generate strictly legal effects, contributes to the acceptance by States of the competence of the Committee to consider communications from individuals and to their taking important steps forward on the protection of human rights. States are aware of the repercussions of ratifying the Optional Protocol. This is reflected by the fact that the number of States parties to the Protocol (91) is considerably inferior than the number of States parties to the ICCPR (140). In fact it would be misleading to attribute legal irrelevance to the views of the Committee. States parties to the Protocol are required to take note of such views and to consider in good faith whether the recommendations they contain should be implemented. The Human Rights Committee has been set up to monitor compliance with the ICCPR and its membership reflects broadly the community of the States Parties. Thus, a general presumption exists that the interpretation of any of the provisions of the Covenant by the Committee, as well as the application of any of these provisions to individual cases by the Committee, is in accordance with the true meaning of the Covenant.

States Parties may, however, decide not to implement the recommendations of the Human Rights Committee. But they should justify their approach by giving explanations to the Committee and providing other types of redress. At any rate, the

*"It is the holder of the right who should be able to claim the exercise of his/her right"*

burden of argument rests on the State party, which has been found in violation of the ICCPR. Such burden is strengthened with the publication of the final view of the Committee, which now is also made available immediately through the Internet. Further, under Article 2, paragraph 3 (a) of the ICCPR, each State party undertakes: "to ensure that any person whose rights or freedoms are herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". In addition, the final views include rather detailed recommendations, which cover a wide spectrum of possible remedies. An important consideration in this connection is that the Committee has developed a follow-up procedure which enables it to check whether the State party concerned is reporting to the Committee within 90 days on the measures it has taken to comply with the recommendations of the Committee and to examine whether such measures are sufficient. A member of the Committee performs the function of special rapporteur to follow-up the implementation of the views of the Human Rights Committee, and urges the State party to implement its recommendations through various channels. A follow-up

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aim to do its best. This resulted in the denunciation of the Optional Protocol to the ICCPR by Jamaica and Trinidad and Tobago. The latter acceded once more to the Protocol introducing a reservation which covers all death penalty cases.

progress report is submitted to the committee at each of its sessions. In addition, the annual report of the Committee to the UN General Assembly contains statistical data on this. Thus, it is not easy for the State to evade the recommendations, and it could still be made more difficult with the support of NGOs, which could assist the victim in obtaining redress.

Nevertheless, and considered as a whole, the rate of success of the communication procedure has not been very high. It is estimated that only in about 25% of the cases the States Parties are implementing the recommendations of the Human Rights Committee in due time. A further 10% are implemented under pressure from the Committee through the follow-up mechanism. Many States Parties do not report back to the Human Rights Committee and refuse to co-operate in the follow-up dialogue. However, it is also possible that the views of the Committee have a long-term effect, not only in preventing future violations of a similar nature, but also because they may show that the approach of the States Parties to the exercise of their sovereignty is not in accordance with that upheld by an international body. Thus, the level of success of the views of the Human Rights Committee is probably higher than what the figures prove.

Another participant referred more briefly to the individual complaints system available under article 22 of the Convention Against Torture and in which only 39 States participate. He referred in particular to the requirements: a) of exhaustion of available domestic remedies; b) that the matter under consideration has not been or is not being examined under another procedure of international investigation of settlement; and c) that the particular communication deals with individual complaints concerning the breach of the Convention provisions. He indicated that there are more than 100 communications in which the Committee had not expressed yet its views, mostly concerning the breach of article 3 of the Convention. With regard to the Framework Convention, he mentioned that similar individual complaints systems to that provided under the UN Convention Against Torture already exist at the Council of Europe.

A participant indicated that attention should be devoted to examine the question of whether under the Framework Convention, an individual complaint procedure has been foreseen. Another participant replied to this question by stating that there was no prospect of the introduction of an individual complaints system under the Framework Convention.

Another participant indicated that, in connection to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT is the master of the evaluation process:

*Ex-Officio Investigation*



- the Committee drafts the report to the State
- the Committee drafts the recommendations
- the State response must be provided within a limited term
- the Committee decides whether the response is satisfactory.

The Committee of Ministers does not intervene in substantive issues, only in the election procedure of the members of the CPT. In this, the CPT differs totally from the Advisory Committee, since the Committee of Ministers of the Council of Europe is the master of the evaluation process under the Framework Convention and the Advisory Committee its assistant.

Another participant moved on to analyse the inspection system established under paragraph 20 of the UN Convention Against Torture, and to which only 94 States signatory of the Convention participate. The system follows a confidential procedure, which starts following the reception by CAT of “reliable information” which appears

<p><i>Confidential inspection procedure under CAT</i></p>
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to contain “well-founded indications” that torture is being “systematically practised” in the territory of a State party to the Convention. Whereas the initial part of the procedure is established as compulsory: “the Committee shall” invite the State party concerned to co-operate in the examination of the information received and to this end to submit observations with regard to the information concerned. Subsequently: “the Committee may” decide to make an inquiry, the Committee “may” decide to wish to visit the territory of the State party concerned, and “may” succeed in its wish. The full procedure may take from three to five years, and although the proceedings are not public, the findings obtained are. Only two countries have been subject to this procedure.

### ***II.2.2 NON TREATY-BASED MECHANISMS***

A conference participant referred to the mandate of the UN Working Group on Minorities, which includes the review of the practical realisation of the principles contained in the UN Declaration. Thus, the working group has a specific mandate to: a) examine what the States have done by reference to the Declaration; b) identify solutions to existing problems and c) to make recommendations. Information can be submitted to the working group meetings by all participants: States, NGOs, minority representatives and scholars. This contributes to promote dialogue among the minority groups, and between them and the States. It also provides an opportunity to examine the application of the principles contained in the Declaration in an informal way.

According to another participant, ECRI has adopted a country by country approach, as the situation varied among different countries and ECRI wanted to be specific, although bringing up general considerations as well. So ECRI started to issue its own

policy recommendations. The Council of Ministers accepted such approaches and procedures.

ECRI had recently engaged in support activities, that is, in promotional work in a general sense. A list of good practices has been published, containing over one hundred examples of means, which had been used in various countries to deal with ECRI's matters of concern. These would serve as good examples to illustrate what can be done to implement general principles. Also legislation to combat racism and xenophobia providing for good and bad examples on how to implement these principles has been published.

One of the general recommendations of ECRI has taken up an idea developed by the Swedish Ombudsman, consisting in measuring the hostility against aliens by looking into the attitudes of the majority population. To achieve this, surveys have been carried out which have served to increase awareness about these issues, to identify existing problems and to bring them into the agenda of the state institutions. It has been noted that the administration may think that there is no discrimination, but still immigrants, feel discriminated against. ECRI has recommended that the States members of the Council of Europe undertake this kind of surveys.

### ***II.3 SUGGESTIONS FOR APPROPRIATE MONITORING, WITH SPECIAL REGARD TO THE FRAMEWORK CONVENTION MONITORING MECHANISM***

#### ***II.3.1. THE FUNCTIONING OF THE ADVISORY COMMITTEE***

A participant pointed to some areas in which the experience of CPT could be useful. Concerning the membership of the Advisory Committee, it is good that it is limited to 18. Having 30 or 40 members would have made it expensive to bring all of them to

<i>Formal arrangements (composition, organisation of the meetings, the use of chambers and rapporteurs)</i>
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Strasbourg and actually the large membership complicates the debates in the case of CPT. Another important issue is to have the membership requirements and functions clearly defined, to facilitate the removal from their positions of those members of the Committee who do not carry out their functions appropriately. Where the composition of the Committee is concerned, it may be worthwhile to attempt having an impact in the election process. For example it is possible through the annual report of the Committee, to make clear the kind of expertise which the committee is missing, or through unofficial advice on particular lists of candidates to point to appropriate ones.

As to the problem area concerning the working methods, another participant referred

in particular to the importance of the question of timing of the meetings of the specific treaty body, given the very limited time available to deal with each State. Another participant emphasised the importance of providing sufficient time to discuss the State party reports in order to allow for a real dialogue. According to his view, six hours would be sufficient to provide credibility to the procedure.

Whereas one participant attached great importance to publicity, and to the fact that in the case of CAT, the committee holds public sessions and that there is press coverage of the event, another participant believed that the Advisory Committee should not hold public sessions.

Another participant indicated that the UN Human Rights Committee has not exhausted all possibilities to improve its monitoring procedure. The procedure can be streamlined and made more effective, as the Committee can hardly afford any longer to sit, discuss and decide in plenary sessions. This takes too much time. Even if each of the 18 members speaks for five minutes only, this amounts to 90 minutes in total. And a second round of discussion is likely to take place. This problem should be addressed with the establishment of chambers. This could be done by amending the ICCPR and its Optional Protocol, but also just by amending the rules of the Committee itself. The committee as a whole would then retain the formal decision-making power, but the decisions would be prepared by the chambers, which could sit simultaneously.

Another participant emphasised the need to consider the possibility that the Advisory Committee work in chambers, given the large number of States that will become parties to the Framework Convention in the future. He asked the previous participant whether the Human Rights Committee has any experience with a rapporteur system, or whether all of its activity is collegial.

The previous participant replied that the Human Rights Committee has started to have a rapporteur system, based on groups of three persons, so that three of the committee

<i>Rapporteur system of the Human Rights Committee</i>
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members are dealing with one State, but it does not work very well. These groups deal with the State report very close to the beginning of the Human Rights Committee's sessions, and it is only then that they get the information from NGOs. As during the following days the sessions have already started, it becomes hard for the members of the committee to digest all the material obtained. Thus, the rapporteur system of the Human Rights Committee is not advanced. All members are supposed to read the report and participate in its discussions although they try to streamline the discussion by providing a list of issues in advance.

Another participant indicated that when ECRI started its work, it decided to subdivide into small working groups of four members, in a country-by-country approach. The

drafts resulting from the activity of the groups was then presented to the plenary. This allowed for greater involvement of the members of ECRI and for an increase in the efficiency of its work. He also indicated that the holding of closed meetings became a necessary element for the method used by ECRI of country by country reporting, but he was otherwise in favour of achieving the highest level of transparency possible. He underlined that ECRI had developed its own rules of procedure and working methods, and pointed to the advantages of doing this step by step not to rise the concern of the Committee of Ministers.

According to one participant, all the endeavours to improve the effectiveness of the Human Rights Committee will be frustrated if it is deprived of experienced supporting staff. The reorganisation of the office of the UN High Commissioner for Human Rights has had, until now, disastrous effects on the work of the Committee. At present, the Committee has no secretary, and the most able assistants have been given other tasks elsewhere. The preceding session of the committee, in March-April 1998 had suffered a great deal as a result. The Human Rights Committee has made an urgent appeal to the High Commissioner in relation to this alarming situation.

*Secretariat  
support*

According to another participant, the existence of the bureau of CAT makes it possible for it to react quickly to emergency situations, acting on behalf of CAT when it becomes necessary to react quickly or to apply pressure. A problem in relation to secretariat resources could be foreseen in relation to the Advisory Committee, as it is unlikely that it will receive the secretariat resources that CAT has (with 16 persons dedicated to service the Committee). Still the Advisory Committee, as it depends on the Council of Europe, can expect secretariat and translation resources to be less limited than in the case of the United Nations.

A participant pointed to the importance of establishing a good climate of dialogue with the State delegation presenting the report but still showing consistency. He reiterated the usefulness, in the case of CAT, of having a rapporteur presenting questions to the delegation, and the possibility for rapporteurs and co-rapporteurs to present conclusions and recommendations. He also presented the possibility for the committee to hold a closed meeting for discussion as a positive feature, and the advantage of only making public recommendations after two days in order to be able to negotiate them.

*Approaches towards  
the reporting State*

With regard to the issue of being specific, another participant saw an advantage in looking into the situation of each country *per se*, and not to finger-point, but rather be helpful and concrete so that recommendations and advice are well founded. This facilitates dialogue with the country concerned. Similarly, the presentation of general prescriptions to the country rather than a list of accusations is useful. Following the

medical jargon, he recommended designing a prescription for the country after having diagnosed its specific needs; then to return and check whether and why it is not taking the medicine, engaging in a follow-up process; then to adjust to the evolution of the problem taking new developments into consideration; finally to see to it that the country is taking the medicine.

One of the participants recalled rule 24 of Resolution (97) 10 of the Committee of Ministers of the Council of Europe.<sup>32</sup> According to this rule, the Committee of Ministers may set a time limit for the States to submit information on the implementation of the Committee of Ministers' recommendations under the monitoring arrangements.

Regarding the time limits of the follow-up procedure by the Human Rights Committee in relation to the State periodic reports under the ICCPR, the Committee determines when the subsequent reports are due. The Committee in its concluding remarks may ask for reports in relation to its concluding observations within one year. However, this has not become a usual practice, given the limited capacity of the Committee to deal with the reports already due, and given the constraints that many States face as to their ability to comply with their different reporting obligations under the various treaties.

*The term for the submission of reports by States*

According to another participant, the question of the 'reports overdue' i.e., the delay by States in the submission of their reports, seems to be a big problem common to all treaty bodies. He referred to the fact that in the Annual Report of CAT it has been stated that 'the non-compliance of a State Party with its reporting obligations constitutes an infringement of the provisions of the Convention'.<sup>33</sup> CAT has not yet received a total of 70 State party reports, and in the case of some States even the initial report is more than ten years overdue. To deal with the situation he mentioned as tools used by the committee: a) sending reminders to the States; b) sending letters to the Ministers of Foreign Affairs of the countries concerned; c) informal contacts with their diplomatic representations; d) offering of assistance in writing the State reports; e) threatening the States that their non-reporting will be publicised in a press conference and in the annual report of the Committee.

When the non-reporting persists, there is a possibility that the committee may consider the implementation of the convention by a State party even in the absence of a State

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<sup>32</sup> The resolution contains the 'Rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities'.

<sup>33</sup> Report of the Committee Against Torture. General Assembly Official Records, Fifty-second Session, Supplement no. 44 (A/52/44), United Nations, New York, 1997.

report in this connection. The participant recommended that, in designing the rules of procedure of the Advisory Committee, the possibility of using such a procedure not be excluded.

Another participant commented on the issue of reports overdue, and referred to the fact that there is a precedent in the practice of the Committee on the Elimination of Racial Discrimination as to the consideration of the performance of the States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination even in the case of lack of a report by the State party concerned.

*How to deal with  
non-reporting  
States?*

However, he wondered whether the Advisory Committee would be in a position to address the situation in a determined country if no report has been submitted by the country concerned. There should be rules of procedure for dealing also with a situation in which the Advisory Committee has requested a State party for an 'ad hoc' report but has still not received any response.

One participant, who had previously taken the floor on this topic, mentioned that providing the possibility that the performance of a State could be examined even if the State had not submitted its report, actually forces the State party concerned to submit it.

Another participant indicated that, although he was personally in favour of the consideration of the performance of a State party in the absence of the report by the State, the majority of the members of this Committee were not. He discussed some legal and practical impediments he foresaw in considering a State's performance in the absence of its report. He explained that the legal impediments were not at all clear, because the possibility always remained open for the State concerned to submit a report.

In the case of the Human Rights Committee, according to article 40 (2) of the International Covenant on Civil and Political Rights: 'All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration'. In addition, according to article 40 (4) of the same covenant: 'the Committee shall study the reports submitted by the States Parties to the present Covenant'. Thus the Committee has only received a mandate to consider the reports of the States Parties, and if no such reports exist there is nothing to be considered.

A participant, in relation to the information to be submitted by the States with regard to their reporting duties in connection with Article 27 of the International Covenant on Civil and Political Rights, referred to the existence of a UN Manual on Human Rights

Reporting.<sup>34</sup>

With regard to the guidelines on State reporting mentioned by the previous speaker, another participant indicated that they have been useful for State reporting but that they must be improved. The Human Rights Committee is now dealing with this matter, as there is a strong feeling that the reporting guidelines must be changed. The previously existing guidelines have been separating the list of issues, but now they are

*The question of  
reporting guidelines*

aiming at concentrating on certain issues to save time. Now the aim is to focus on the most serious questions, given the fact that there are only six hours available for discussion.

There is a need to adapt the existing reporting guidelines to this practice, thus the ongoing activity to reform the guidelines in this respect.

Another participant raised the question of the existence of small countries with limited resources, and the fact that many of them have to report to six different treaty bodies. This means the preparation of six State reports at least every four years, which poses a heavy burden on the respective State bureaucracies. These countries need both resources and knowledge to fulfil their reporting obligations. He mentioned as possible means to deal with these problems: a) the offering of technical assistance; b) the concession of longer intervals of time between the reports; and c) the preparation of consolidated reports to the various treaty bodies.

With regard to the issue of the burden of the reporting activity generally, he underlined the importance of the elaboration of an appropriate initial report, and particularly the core section of the document. He also pointed to the need for elaborating good guidelines for reporting and the offering of technical assistance to support the reporting activity. With regard to the periodic reports, he underlined the importance of elaborating targeted reports, for which good guidelines are necessary. This would allow to reduce the volume of the periodic reports as to include just: a) the new laws or conditions created relevant to the implementation of the convention, article by article; b) the replies to the questions raised at the previous session of the committee dealing with the State party concerned; and c) the steps taken by the State party to implement the recommendations suggested. This approach would contribute to a positive and useful dialogue between the reporting State and the committee.

A participant referred to some of the implementation problems faced by CPT and which could be also relevant to the work of the Advisory Committee. He indicated that the first question is to ensure that the rights granted are respected in practice. Given the fact that CPT has the right to enter places of detention, the question of on-site visits has not led to a problem in the relationship between CPT and the Committee of

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<sup>34</sup>HR/PUB/91/1 (1991). Updated in 1997.

Ministers.

He also indicated that the Advisory Committee might be confronted with problems in its interface with the Committee of Ministers in relation to the question of implementation. Part II of Resolution (97) 10 of the Committee of Ministers, which deals with the procedure to be followed by the Advisory Committee in performing its monitoring functions, is full of ambiguities and loop-holes which the Advisory Committee could utilise.

He indicated that the extent of the problems will depend on the approach of the Advisory Committee, and in particular on whether it will adopt a pro-active attitude, and carry out on-site visits, as one of the participants had previously suggested. Any kind of unilateral declaration of independence by the Committee is unlikely to succeed. There is a need rather, to reinforce the impact of the Advisory Committee through its contribution to the evaluation process at the level of the Committee of Ministers, a method likely to have more influence.

*The relations of the Advisory Committee with the Committee of Ministers*

The importance of information access cannot be overstated, as good access to information for various parties may contribute to overcoming the need for on-site visits. Similarly, the organisation of information seminars where the committee members may gather to discuss can prove useful.

To streamline his presentation, the participant identified three strategic areas on which the action of the Advisory Committee should focus:

- Reinforcing the links with the Committee of Ministers with regard to the implementation process.
- Reinforcing the links with the Committee of Ministers in relation to the election of the members of the Advisory Committee
- Particular attention should also be devoted to paragraphs 23 and 24 of Resolution (97) 10, which deals with the Advisory Committee sending opinions to the Committee of Ministers. In connection with this particular point, the participant wondered whether one member of the Advisory Committee should not be present at the meetings of the Committee of Ministers considering the opinions in order to explain their content.

With regard to the question of the follow-up to the implementation of the opinions of the Advisory Committee, he suggested the possibility that the Committee of Ministers ask for the Advisory Committee's assessment as to how the States have implemented the recommendations of the Committee of Ministers. In this way, the information on implementation would systematically be sent to the Advisory Committee for its



opinion.

In relation to the question of the Advisory Committee periodic reporting system established under paragraph 38 of Resolution (97) 10, the similar reporting procedure in which CPT engages annually is in fact a very useful vehicle for CPT to convey messages to the Committee of Ministers in relation to the election of committee members, budgetary and other questions which arise during the year. It is also a good motive to hold a meeting with the Committee of Ministers. He also attached great importance to the publicity of the reports.

Another participant pointed to the difficult task ahead for the Advisory Committee to find an independent role. However, as the experience showed in the case of ECRI, it soon became possible to have a vision of what the monitoring body wanted to achieve. He emphasised the importance of being perceived as independent, not to go directly to the Committee of Ministers but to establish the facts on the ground and follow a step by step approach, allowing States to get used to the vision of the monitoring body, as it had happened in the case of ECRI. As a result, ECRI now enjoys a fairly independent status, and it is engaged in recommendations and positive dialogue with the States. He emphasised the importance of not being shy but bold, and having a clear vision of what the goals are.

*Can the Advisory Committee find an independent role?*

Another participant, although recognising the need to be bold, stressed that the rules of the Committee must be followed and that mandates for specific purposes must be obtained. There is a need for the Advisory Committee to remain independent, and to be involved in the election process of its members, to ensure that the members of the Advisory Committee are also independent. Independence can be facilitated by holding meetings in camera. Ordinary meetings in particular should take place with no audience.

To the question posed by one of the participants of whether the CPT has been asked to assist the States with issues of policy administration and the adoption of implementing measures, and whether the activity of the committee has proved to be a constructive tool, the previous participant replied that even if States has often been critical with the activities of the committee, these activities has also been perceived as constructive by some Ministers, because it gave them access to more funds. Dialogue with States has led to advice and support for programmes, concerning forensic doctors for example. However, the role of the members of CPT is to inspect and make recommendations (even in areas such as prison infrastructure), not to provide assistance. The assessment of the committee may facilitate lobbying activity, and the application for funds from institutions such as those of the EU, which have funds available. Training programmes have been established on the basis of decisions adopted by CPT, but no decisions as to

their establishment have been taken by the Committee itself, as this would have diverted the activities of the Committee from its specific duties.

According to one of the participants, the presence of one of the members of the Advisory Committee at meetings of the Committee of Ministers in relation to the Framework Convention<sup>35</sup> could possibly become an accepted practice. Also, the practice of sending the information in reply to recommendations by the Committee of Ministers directly to the Advisory Committee could most probably be accepted. The practice of annual reporting and the holding of an annual hearing by the Committee of Ministers has become an accepted practice under three other international instruments.

CPT has actually been established to carry out on-site visits, resulting from the need to have a good knowledge of State practice, and to establish the difference between what

*The question of the authorisation for the Advisory Committee to carry out on-site visits*

it is being said about State practice or how it develops, and what actually occurs. There is scope for on-site visits under paragraph 36 of Resolution (97) 10, and this possibility should neither be ruled

out nor in. The Committee of Ministers may be reluctant and it may argue budgetary difficulties in this respect.

According to another participant, some of the ideas presented concerning the rules of procedure of the Advisory Committee will need to be approved by the Committee of Ministers, in accordance with paragraph 37 of Resolution (97) 10. However, another participant indicated that it would be preferable not to regulate the on-site visits in the rules of procedure, but to allow for such a possibility to remain open.

According to another participant, on-site visits should only take place if authorised by the Committee of Ministers.

A participant indicated that during the last session of the UN Working Group on

*Should on-site visits be regulated by the rules of procedure?*

Minorities, the need for the working group to be enabled to visit the countries was highlighted.

The Working Group lacks a political mandate to carry out on-site visits, but still needs to obtain direct information.

Another participant also referred to the possibilities for, and number of, on-site visits which could be appropriate for the Advisory Committee to carry out its functions properly. He insisted that there is no need to be too preoccupied with the question of on-site visits, as the issue of minority rights is not comparable to that of torture, for example. The minority question entails a collective right aspect to which the

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<sup>35</sup>See Article 26 of the Framework Convention.

identification of legislation and existing practice may be more important than the carrying out of particular on-site visits. The minority rights question allows for, and entails, a broader methodology. He mentioned the fact that the experience with on-site visits derived from the practice of the High Commissioner on National Minorities of the OSCE could be used as a reference for the Advisory Committee. He indicated that, whereas there is a shared common idea that torture is to be avoided, and except for some cultural relativists, this human right violation is generally condemned, much more disagreement exists with regard to appropriate approaches and policies concerning minority rights. Thus, the specificity of each body of norms should reflect in appropriate procedures. Norms and corresponding procedures should be considered as a whole.

Another participant re-examined the issue of one-site visits by the Advisory Committee, insisting that there is a need for this possibility to be clearly established. He mentioned, as an example, the monitoring of the implementation of article 16 of the Framework Convention.<sup>36</sup> There may be a need for the Advisory Committee to determine *in situ* whether a violation is occurring or not, such as whether persons are being expelled or evicted. Thus, the possibility to undertake missions should be contemplated, although not necessarily on a regular basis, but just when required, to find out what is happening on the spot.

Also in relation to the question of on-site visits, another participant indicated that ECRI has been hesitant, in particular when it comes to using such visits as a means of information gathering. He stressed the possibilities of obtaining information also in writing and replying using the same means. The participant indicated that the link of ECRI with the Committee of Ministers is good, but also pointed to the need to work independently and to take initiatives, so that there is only a case for the Committee of Ministers to intervene when it actually dislikes the approach which has been adopted. ECRI undertook a process of gaining independence step by step, without breaking any of the existing rules, so as to gain the confidence of the Committee of Ministers, which progressively eased its hold on ECRI. He pointed to the fact that if good work has been achieved, it becomes much easier to master the evaluation process. He also pointed to the importance of not making unilateral declarations of independence and not breaking the rules, while having clear objectives. His first advice to the Advisory Committee therefore, was not to break the established rules.

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<sup>36</sup> According to this article, the State parties to the Framework Convention shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the Framework Convention.

### ***II.3.2 THE RELATION BETWEEN THE ADVISORY COMMITTEE AND VARIOUS INTERNATIONAL MONITORING MECHANISMS***

A conference participant emphasised the importance for the Advisory Committee to receive the support not only of the governments concerned, but also of the international community.

Another participant referred to the possible link between the UN Working Group on Minorities and the Advisory Committee, and in particular the submission of relevant information on the situation of minorities in particular countries, which could be relevant for preparing for the consideration of State party reports. She also encouraged the development of co-operation and links in other areas, which could also provide an input in the activities of the UN Working Group.

Another participant stated that an informal link could be established between the Human Rights Committee and the Advisory Committee with regard to the interpretation of Article 27 of the ICCPR. Recommendations made by either the Advisory Committee or the Human Rights Committee could be taken up by the other body. Similarly, the relevant information which derives from the follow-up mechanism in relation to the views of the Human Rights Committee in connection with Article 27 could be taken up by the Advisory Committee.

*Recommendations made by one body could be taken up by another body*

The Human Rights Committee usually does not refer to the work of other committees because it deals exclusively with the ICCPR. Nevertheless, if the Human Rights Committee had good Secretariat support for the preparation of the sessions, it could get information on the activities of other monitoring bodies, (*inter alia*, of CAT) which the Human Rights Committee could take into consideration. Always bearing in mind, however, that the yardstick applied by each of the various committees is a different one. The question of the overlap of competencies between the committees should also be addressed in due time.

A conference participant referred to the importance of the Advisory Committee developing a link to the UN Committee on the Elimination of Racial Discrimination and ombudsmen against racial discrimination. Another participant referred to the need to devote attention to the activities undertaken by the European Union in the field of minority protection.

*The efforts of various international institutions must be synchronized*

A participant pointed to the need to take into account and synchronize the efforts of the various international institutions. He referred to the power of the Parliamentary

Assembly of the Council of Europe to make recommendations to the Committee of Ministers. He mentioned in this connection Recommendation 1201 of the Parliamentary Assembly of the Council of Europe.

Also dealing with the question of the co-ordination of activities of the different international institutions, a participant indicated that the OSCE High Commissioner on National Minorities deals with ethnic tensions at an early stage. The Advisory Committee should not aim at responding to tensions immediately. Rather, given the way in which the committee operates, based on discussions and the adoption of decisions, the Advisory Committee should make use of this instrument for the follow-up of the recommendations made. The participant characterised the present relation between the OSCE High Commissioner on National Minorities and the Council of Europe as pragmatic rather than formal. The participant considered the Framework Convention system as a basis for regular action, and the High Commissioner as a tool for immediate action by the international community.

Finally, another participant referred to the security concern which the minority issue often raises, and made a call for the co-ordination of the different treaty bodies and mechanisms dealing with the implementation of the rights of minorities, and from this perspective, the elaboration of strategic mandates, so that there is no obstruction of the work or achievements of the various bodies.

### ***II.3.3. THE NEED FOR EDUCATION REGARDING THE FRAMEWORK CONVENTION. NGO INVOLVEMENT IN THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION.***

According to one of the conference participants, the success of human rights is largely dependent on the knowledge by the individuals of their rights. Efforts should focus on increasing the legal knowledge of the people. Only those aware of their rights may claim them, providing a possibility for the competent organs at the national and international level to intervene and to ensure the effective implementation of those rights.

Another participant stressed that the broad educational function of the implementation process should be borne in mind, and become an integral part of this process.

A participant referred to the need for the Advisory Committee to become well known. He indicated that ECRI is now publishing an annual report and a periodical, and has created a web-site.

In relation to the ICCPR, another participant referred to the fact that it is difficult to make States ratify the covenant, but even more to strengthen the goodwill of the States

Parties to fulfil their duties under the covenant and closely co-operate with the Human Rights Committee. Substantial progress in the protection of human rights can only be achieved by the creation of a culture of human rights, based on the recognition that human beings who are free and whose dignity is respected, strengthen the community rather than weaken it. Of course, dictatorial regimes of whatever political origin will

*The success of human rights depends on the knowledge by the individuals of their rights*

never understand this message. Therefore, it must be clearly stated that human rights have a best chance to be respected in a democracy, governed by the rule of law and controlled by an independent judiciary. The idea of human rights becomes obscured if the theory is upheld that human rights have nothing to do with the political system. History proves the contrary to us.

Another participant stated that use should be made of the Framework Convention, and that there is a need to make it known. The inclusion of references to the Framework Convention in the bilateral agreements concluded by the States Parties can contribute to this end. Similarly, there is a need to engage an increasing number of NGOs, particularly in relation to the reporting procedures under the convention. The participant pointed to Finland as an example of systematic practice of NGO involvement on State reporting, providing possibilities for real NGO input and comments on the draft reports elaborated by the government, which contributes to their legitimacy. ECMI could make a contribution by ensuring that the material provided in the reports is of the best possible quality and serve as a basis for a thorough debate in individual countries as well as in the Council of Europe.

With regard to Finnish practice in relation to NGO involvement in the reporting process, another participant further specified that this practice actually involved NGOs in writing the State reports. He restated that ECMI could play an active role in that process.

A participant referred to the fact that the Framework Convention was 'on' national minorities, but national minorities were absent from the monitoring mechanism it

*There is a need for the Advisory Committee to engage in dialogue with NGOs*

established. He stressed the necessity for dialogue not only of the Advisory Committee with the Committee of Ministers but also with NGOs. He recalled the example of good co-operation of the State with NGOs which had been previously presented by another participant, and stressed the necessity of engaging in dialogue at the national level. With regard to dialogue at the international level, he suggested that the Advisory Committee should not only utilise the usual information channels, but also try to develop a structure of dialogue of an organic nature. He considered the necessity for minorities to be continuously demanding dialogue with the States to be unacceptable, and hoped that this would not occur also at the international level. Thus, there is a need for the Advisory Committee

to engage in dialogue with NGOs.

Another participant pointed to the utmost importance of the Advisory Committee having a close link to the civil society and NGOs in the countries concerned. The issuing of country reports should serve as a basis for the civil society to start a discussion inside the country, so that in following rounds it is possible to look for complementary measures.

Another participant indicated that attention should be devoted to examine the way in which NGO representatives are elected.

According to another participant, during the last session of the UN Working Group on Minorities, the recommendation was made to submit allegations by NGOs to States, to allow them to respond. This would provide for an indirect way to hold States accountable. The participant pointed to the growing State participation in the sessions of the Working Group and encouraged States to participate in the next session.

Finally, another participant indicated that a possible task for minorities under the monitoring system of the Framework Convention could be the elaboration of shadow reports presenting the point of view of the minorities.

**ECMI RECOMMENDATIONS**  
**on the Implementation of the Council of Europe Framework Convention for the**  
**Protection of National Minorities**

*Flensburg, Germany, 14 June 1998*

**Introduction**

The Council of Europe Framework Convention for the Protection of National Minorities is the first legally binding international instrument devoted to the rights of minorities in general. The Convention contains mostly programme-type provisions concerning the rights of minorities which leave the States Parties a measure of discretion in the implementation of the objectives enshrined. Thus, the success of the Convention will depend to a large extent on the monitoring of the implementation of this Convention. The Convention and its implementation mechanism should be considered as a living instrument to be applied and developed in an open and generous spirit for the benefit of minorities.

The Framework Convention provides that the Committee of Ministers of the Council of Europe shall monitor the implementation of the Convention and will be assisted in this task by an Advisory Committee (arts. 24-26). The Advisory Committee will play an important role in the further development of the monitoring mechanism, as well as in the implementation of the Convention.

The „European Centre for Minority Issues“ (ECMI) responded positively to a suggestion by Professor Ole Espersen, Commissioner of the Council of the Baltic Sea States (CBSS) on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities, and member of ECMI's Advisory Council, to hold a conference on the implementation of the Framework Convention. The aim of this meeting was to discuss the political, legal and financial aspects of the implementation mechanism. Experts from international implementation committees of the UN and the Council of Europe, other intergovernmental organisations, as well as participants from the NGO community, academia and politics were invited. In addition, all members of the Advisory Committee on the Framework Convention were invited (see attached list of participants and programme of the conference).

In order to contribute to a fast, thorough and positive implementation of the Framework Convention, ECMI decided to organise an international conference „Implementing the Framework Convention for the Protection of National Minorities“. The conference took place from 12 to 14 June 1998 at Duborg Skolen, the high school of the Danish minority in Germany, and at the Kompagnietor



Building, the seat of ECMI, both in Flensburg, Germany. With the active help of the participants, ECMI as the organiser of the conference has formulated the attached recommendations, which will be forwarded to:

- the members of the Committee of Ministers and members of the Parliamentary Assembly of the Council of Europe
- the Secretary General of the Council of Europe
- the European Commission and the members of the European Parliament
- the participating States of the OSCE and members of the Parliamentary Assembly of the OSCE
- the OSCE High Commissioner on National Minorities
- the member governments of the CBSS and the members of its Parliamentary Assembly
- the Commissioner of the CBSS on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities
- other sub-regional organisations
- the United Nations High Commissioner for Human Rights and the six United Nations Treaty Bodies
- minority organisations.
- NGOs dealing with minority issues.

## **ECMI Recommendations**

### ***Ratification of the Framework Convention***

1. All countries of Europe should ratify or accede to the Framework Convention for the Protection of National Minorities. The States Parties should refrain from reservations and interpretative declarations. In this context it should be recalled that „the existence of minorities is a question of fact, not of law.“ (Minority Schools in Albania (1935), PCIJ Ser. A/B, No. 64, 17).

### ***Information on the Framework Convention***

- 2.a. States and the Council of Europe as well as other intergovernmental and non-governmental organisations should intensify, and co-operate in, their efforts to disseminate information on the Framework Convention, as well as on the mandate and work of the Advisory Committee, for example through the organisation of conferences, seminars and workshops.
- 2.b. In this regard, it would be desirable that the Council of Europe prepare a handbook that would include:
  - the text of the Framework Convention

- the explanatory report
  - Resolution 97(10) by the Committee of Ministers
  - information on reporting under the Convention
  - procedures and mechanisms by which members of minorities can address their concerns to the Advisory Committee
- 2.c. The Council of Europe should seek ways of having the handbook translated into the national languages of member states and encourage them to translate it into minority languages.
- 2.d. The Council of Europe should disseminate information on good practices with regard to the protection of minorities and the improvement of inter-ethnic relations.
- 2.e. The annual reports of the Advisory Committee should be made available to the public.

### ***Functioning of the Implementation Mechanism***

- 3.a. The rules of procedure of the Advisory Committee should be drawn up in such a way as to enable it to perform the task of efficient monitoring.
- 3.b. In order to ensure efficient and effective implementation of the Framework Convention, governments and the Committee of Ministers should ensure that the members of the Advisory Committee are competent, independent and impartial, and in a position to serve the Committee effectively. The composition of the Committee should reflect the presence of the full range of necessary expertise in the field of minority rights from a variety of professions and disciplines. The States Parties should give favourable consideration to the appointment of persons belonging to minorities to serve on the Committee.
- 3.c. The Committee of Ministers should provide the Advisory Committee with sufficient secretariat and financial support.
- 3.d. States Parties must respect time limits and submit adequate reports. In cases where states fail to comply with their reporting duties under the Convention, all necessary measures to ensure compliance should be taken. The possibility of examining the situation in a state in the absence of a report where it is considerably overdue should not be ruled out.
- 3.e. The Committee of Ministers and the Advisory Committee should ensure the

transparency of the monitoring process.

### ***Other sources of information for the Advisory Committee***

- 4.a. In addition to state reports, the Advisory Committee should receive concrete information on minority situations in different contexts, from different independent sources (also including references to constitutional arrangements, national legislation and state practice, as well as reference to domestic judicial and administrative remedies) in order to carry out its task effectively.
- 4.b. The Advisory Committee should focus on the protection afforded to minorities in practice, especially at regional and local levels. Therefore, the Advisory Committee should undertake missions to the States Parties concerned.
- 4.c. The Advisory Committee should devote sufficient time to engage in dialogue with governments, representatives of minorities and NGOs, and organise hearings in order to facilitate this objective.
- 4.d. International non-governmental organisations dealing with minority issues should be associated with the work of the Advisory Committee in a consistent and appropriate manner.
- 4.e. The Advisory Committee should benefit from information available at the UN, Council of Europe, OSCE and CBSS organs, bodies, institutions, and other specialised agencies.

### ***Application and Interpretation of the Framework Convention***

- 5.a. The relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.
- 5.b. The Advisory Committee may take into account in its work in addition to international human rights treaties the provisions of, inter alia, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992), the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), the Hague Recommendations Regarding the Education Rights of National Minorities (1996), and the Oslo Recommendations Regarding the Linguistic

Rights of National Minorities (1998), as well as the recommendations of the Parliamentary Assembly of the Council of Europe and the OSCE High Commissioner on National Minorities.

- 5.c. The Advisory Committee should also take into account standards ensuing from bilateral agreements between the States Parties.

### ***State Reports***

6. The body of experience gained by the different treaty bodies during their examination of state reports can be of help both for the Advisory Committee in the examination of reports and for the States in preparing these reports. Therefore, the Advisory Committee as well as the States Parties should take into account the reporting guidelines of treaty bodies.

### ***Follow-up***

7. The Committee of Ministers should adopt recommendations, which are critical of parties where there is an obvious lack of compliance. The Advisory Committee should be closely and systematically involved in the follow-up process regarding the implementation of these recommendations.

## DOCUMENTARY APPENDIX

### *LIST OF PARTICIPANTS*

of the International Conference of the European Centre for Minority Issues

#### **Implementing the Framework Convention for the Protection of National Minorities**

Duborg Skolen and Kompagnietor Building, Flensburg, Germany,  
12 to 14 June 1998

<b>Christa Achleitner</b>	<i>Head of Section “Volksgruppenangelegenheiten”, Chancellory of the Republic of Austria, Vienna, Austria</i>
<b>Gudmundur Alfredsson</b>	<i>Co-Director, Raoul Wallenberg Institute of Human Rights, Lund, Sweden</i>
<b>Romedi Arquint</b>	<i>President, Federal Union of European Nationalities, Cinuos-chel, Switzerland, and Member of the ECMI Advisory Committee</i>
<b>Arie Bloed</b>	<i>Director, Constitutional &amp; Legal Policy Institute, Budapest, Hungary</i>
<b>Bojan Brezigar</b>	<i>Director, European Bureau for Lesser Used Languages, and Editor-in-Chief “Primorski Dnevnik”, Trieste, Italy</i>
<b>Camilla Busck-Nielsen</b>	<i>Legal Officer, Legal Department, Ministry for Foreign Affairs, Helsinki, Finland</i>
<b>Farimah Daftary</b>	<i>Research Associate, European Centre for Minority Issues, Flensburg, Germany</i>
<b>Rajko Djuric</b>	<i>President, International Romani Union, Berlin, Germany, and Member of ECMI Advisory Council</i>

<b>Panayote Elias Dimitras</b>	<i>Lecturer, Central European University, Budapest, Hungary, and Spokesperson, Greek Helsinki Monitor &amp; Minority Rights Group, Athens, Greece</i>
<b>Mirjana Domini</b>	<i>Member of the Advisory Committee on the Framework Convention and Head of Research Group at the Institution for Migration and Ethnic Studies, Zagreb, Croatia</i>
<b>Smaranda Enache</b>	<i>Co-chair, Pro Europe League, and Deputy Chairperson of ECMI Advisory Council, Tirgu-Mures, Romania</i>
<b>Eva Ersbøil</b>	<i>Research Fellow, The Danish Centre for Human Rights, Copenhagen, Denmark</i>
<b>Ole Espersen</b>	<i>Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities, Copenhagen, Denmark, and Member of ECMI Advisory Council</i>
<b>María Amor Martín Estébanez</b>	<i>Centre for Socio-Legal Studies, University of Oxford, United Kingdom</i>
<b>Kinga Gál</b>	<i>Research Associate, European Centre for Minority Issues, Flensburg, Germany</i>
<b>Torsten Gersfelt</b>	<i>Executive Director for Denmark, Ireland, Lithuania, &amp; FYR Macedonia of the European Bank for Reconstruction and Development, London, United Kingdom</i>
<b>Hennig Gjellerod</b>	<i>Member of Parliament, President of the Danish Delegation to the Council of Europe, Copenhagen, Denmark</i>
<b>François Grin</b>	<i>Department of Economics, University of Geneva, Faculty of Economic and Social Sciences, University of Fribourg, Switzerland</i>

<b>Rainer Hofmann</b>	<i>Member of the Advisory Committee on the Framework Convention; Director, Walther-Schücking–Institute for International Law, Christian-Albrechts-University Kiel, Germany; Member of the Executive Board of ECMI</i>
<b>Outi Holopainen</b>	<i>First Secretary, Political Department, Ministry for Foreign Affairs, Helsinki, Finland</i>
<b>Frank Horn</b>	<i>Director, Northern Institute for Environmental and Minority Law, University of Lapland, Rovaniemi, Finland</i>
<b>Alexandra Ioannidou</b>	<i>Special consultant to the Greek Ministry of Foreign Affairs and Member of the DH-MIN Commission of the Council of Europe, Athens, Greece</i>
<b>Priit Järve</b>	<i>Senior Analyst, European Centre for Minority Issues, Flensburg, Germany</i>
<b>Rudko Kawczynski</b>	<i>Member of the Board of Directors, European Roma Rights Center, Budapest, Hungary</i>
<b>Eckart Klein</b>	<i>Director, Human Rights Centre, University of Potsdam, Germany, and Member of the UN Human Rights Committee</i>
<b>Antti Korkeakivi</b>	<i>Minorities Unit, Directorate of Human Rights, Council of Europe, Strasbourg, France</i>
<b>Jørgen Kühl</b>	<i>Director of the Museum of the Danish Minorities in Germany „Danevirke“, Dannewerk, Germany</i>
<b>Marju Lauristin</b>	<i>Member of the Advisory Committee on the Framework Convention and Professor, Tartu University, Estonia</i>
<b>André Liebich</b>	<i>Professor of International History and Politics, Graduate Institute of International Studies, Geneva, Switzerland</i>

<b>Zdenka Machnyikova</b>	<i>Adviser to the OSCE High Commissioner on National Minorities, The Hague, Netherlands</i>
<b>Peter Nelde</b>	<i>Director, Research Centre on Multilingualism, Brussels, Belgium</i>
<b>Manon Olsthoorn</b>	<i>International Officer, Minority Rights Group International, London, United Kingdom</i>
<b>Frank Orton</b>	<i>Member of the European Commission against Racism and Intolerance, and Former Ombudsman against Ethnic Discrimination, Stockholm, Sweden</i>
<b>Alan Phillips</b>	<i>Member of the Advisory Committee on the Framework Convention and Director, Minority Rights Group, London, United Kingdom</i>
<b>Jozef Šivák</b>	<i>Member of the Advisory Committee on the Framework Convention and Researcher, Institute of Philosophy, Slovak Academy of Sciences, Bratislava, Slovakia</i>
<b>Jeroen Schokkenbroek</b>	<i>Head of Section, Minorities Unit, Directorate of Human Rights, Council of Europe, Strasbourg, France</i>
<b>Bent Sørensen</b>	<i>Professor, Vice-Chairman of the UN Committee Against Torture, and Co-opted Member to the International Rehabilitation Council for Torture Victims, Copenhagen, Denmark</i>
<b>Frank Steketee</b>	<i>Minorities Unit, Directorate of Human Rights, Council of Europe, Strasbourg, France</i>
<b>Trevor Stevens</b>	<i>Secretary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, Strasbourg, France</i>
<b>Sven Tägil</b>	<i>Professor, University of Lund, Sweden</i>



<b>Cecilia Thompson</b>	<i>Secretary, Working Group on Minorities, Office of the UN High Commissioner for Human Rights, Geneva, Switzerland</i>
<b>Patrick Thornberry</b>	<i>Professor of International Law, Keele University, United Kingdom, and Member of ECMI Advisory Council</i>
<b>Marianne Tidick</b>	<i>Vice-Chairperson of the Executive Board of the European Centre for Minority Issues, Flensburg, Germany</i>
<b>Sylvia Träbing-Butzmann</b>	<i>Landesverband “Schleswig-Holstein Deutscher Sinti und Roma”, Kiel, Germany</i>
<b>Stefan Troebst</b>	<i>Director, European Centre for Minority Issues, Flensburg, Germany</i>
<b>Boris Tsilevich</b>	<i>Deputy of Riga City Council, Chief Programmer, Center for Educational and Social Research “Baltic Insight“, Riga, Latvia</i>
<b>Fernand de Varennes</b>	<i>Director, Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict, Perth, Australia</i>
<b>Matthias Weckerling</b>	<i>Head of Section, Federal Ministry of Justice, Bonn, Germany</i>
<b>Matthäus Weiss</b>	<i>Chairman, “Landesverband Schleswig-Holstein Deutscher Sinti und Roma”, Kiel, Germany</i>

# FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Strasbourg, 1.II.1995

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms;

Wishing to follow-up the *Declaration of the Heads of State and Government* of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realization of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the *Convention for the Protection of Human Rights and Fundamental Freedoms* and the *Protocols* thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,  
Have agreed as follows:

## **Section I**

### **Article 1**

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

### **Article 2**

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

### **Article 3**

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

## **Section II**

### **Article 4**

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

### **Article 5**

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

#### **Article 6**

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

#### **Article 7**

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

#### **Article 8**

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

#### **Article 9**

1. The Parties undertake to recognize that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural

pluralism.

#### **Article 10**

1. The Parties undertake to recognize that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

#### **Article 11**

1. The Parties undertake to recognize that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
2. The Parties undertake to recognize that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

#### **Article 12**

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
2. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

#### **Article 13**

1. Within the framework of their education systems, the Parties shall recognize that persons belonging to a national minority have the right to set up and to

manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties.

#### **Article 14**

1. The Parties undertake to recognize that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

#### **Article 15**

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

#### **Article 16**

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

#### **Article 17**

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels.

#### **Article 18**

1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

## **Article 19**

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

## **Section III**

### **Article 20**

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

### **Article 21**

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

### **Article 22**

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

### **Article 23**

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

## **Section IV**

### **Article 24**

1. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
2. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

## **Article 25**

1. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
2. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
3. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

## **Article 26**

1. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognized expertise in the field of the protection of national minorities.
2. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

## **Section V**

## **Article 27**

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## **Article 28**

1. This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

## **Article 29**

1. After the entry into force of this framework Convention and after consulting



the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.

2. In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

### **Article 30**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

### **Article 31**

1. Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

### **Article 32**

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

**a** any signature;

**b** the deposit of any instrument of ratification, acceptance, approval or accession;

**c** any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

**d** any other act, notification or communication relating to this framework Convention.

**In** witness whereof the undersigned, being duly authorized thereto, have signed this framework Convention.

**Done** at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

## CHART OF SIGNATURES AND RATIFICATIONS

### Framework Convention for the Protection of National Minorities (\*)

**Opening for signature** Place: Strasbourg, Date: 01/02/95  
**Entry into force** Conditions: 12 ratifications, Date: 01/02/98

Last up-date: 24/06/1999 by Council of Europe

MEMBER STATES	Date of Signature	Date of Ratification or Accession	Date of entry into force	R: Reservations D: Declarations T: Territorial Decl.
ALBANIA	29/06/95			
ANDORRA				
AUSTRIA	01/02/95	31/03/98	01/07/98	D
BELGIUM				
BULGARIA	09/10/97	07/05/99	01/09/99	D
CROATIA	06/11/96	11/10/97	01/02/98	
CYPRUS	01/02/95	04/06/96	01/02/98	
CZECH REPUBLIC	28/04/95	18/12/97	01/04/98	
DENMARK	01/02/95	22/09/97	01/02/98	D
ESTONIA	02/02/95	06/01/97	01/02/98	D
FINLAND	01/02/95	03/10/97	01/02/98	
FRANCE				
GEORGIA				
GERMANY	11/05/95	10/09/97	01/02/98	D
GREECE	22/09/97			
HUNGARY	01/02/95	25/09/95	01/02/98	
ICELAND	01/02/95			
IRELAND	01/02/95	07/05/99	01/09/99	
ITALY	01/02/95	03/11/97	01/03/98	
LATVIA	11/05/95			
LIECHTENSTEIN	01/02/95	18/11/97	01/03/98	D
LITHUANIA	01/02/95			
LUXEMBOURG	20/07/95			D:
MALTA	11/05/95	10/02/98	01/06/98	R/D
MOLDOVA	13/07/95	20/11/96	01/02/98	
NETHERLANDS	01/02/95			
NORWAY	01/02/95	17/03/99	01/07/99	
POLAND	01/02/95			
PORTUGAL	01/02/95			
ROMANIA	01/02/95	11/05/95	01/02/98	
RUSSIA	28/02/96	21/08/98	01/12/98	D
SAN MARINO	11/05/95	05/12/96	01/02/98	
SLOVAKIA	01/02/95	14/09/95	01/02/98	
SLOVENIA	01/02/95	25/03/98	01/07/98	D

<b>SPAIN</b>	01/02/95	01/09/95	01/02/98	
<b>SWEDEN</b>	01/02/95			
<b>SWITZERLAND</b>	01/02/95	21/10/98	01/02/99	D
<b>"The former Yugoslav Republic of Macedonia"</b>	25/07/96	10/04/97	01/02/98	D
<b>TURKEY</b>				
<b>UKRAINE</b>	15/09/95	26/01/98	01/05/98	
<b>UNITED KINGDOM</b>	01/02/95	15/01/98	01/05/98	

<b>NON MEMBER STATES</b>	<b>Date of Signature</b>	<b>Date of Ratification or Accession /</b>	<b>Date of entry into force</b>	<b>R: Reservations D: Declarations T: Territorial Decl.</b>
<b>ARMENIA</b>	25/07/97	20/07/98	01/11/98	

(\*) Treaty open for signature by the member States and up until the date of entry into force by any other State so invited by the Committee of Ministers

COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

**RESOLUTION (97) 10**

**Rules adopted by the Committee of ministers on the monitoring arrangements  
under Articles 24 to 26**

**of the framework Convention for the Protection of National Minorities**

*(Adopted by the Committee of Ministers on 17 September 1997*

*at the 601st meeting of the Ministers' Deputies)*

*Provisional version*

**I. The Advisory Committee provided for by Article 26 of the framework  
Convention for the Protection of National Minorities: Composition, Election  
and Appointment**

***A. Membership of the Advisory Committee***

***1. Members***

1. Members of the Advisory Committee shall be appointed in accordance with these rules. They shall sit either as ordinary or additional members.
2. The number of ordinary members of the Advisory Committee shall be a minimum of twelve and a maximum of eighteen. This shall not prohibit the Advisory Committee from commencing its work in accordance with Rule 28.
3. Members of the Advisory Committee may not be substituted.
4. There shall not be more than one member in respect of any Party.

***2. Qualifications and capacity of the members***

5. The members of the Advisory Committee shall have recognised expertise in the field of the protection of national minorities.
6. The members of the Advisory Committee shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

## ***B. Procedure for Election and Appointment***

### *1. General*

7. The Committee of Ministers shall elect experts to the List of Experts Eligible to Serve on the Advisory Committee (hereafter referred to as the List) and appoint ordinary and additional members in accordance with the following rules.

### *2. Election of experts to the List*

8. Each Party may submit to the Secretary General the names and the curricula vitae, in one of the official languages of the Council of Europe, of at least two experts who have the required qualifications and capacity to serve on the Advisory Committee. The Secretary General shall transmit these documents to the Committee of Ministers.

9. The Committee of Ministers shall elect one of these experts to be entered on the List in respect of that Party.

10. Elections shall be held in the chronological order in which the names and curricula vitae submitted by Parties have been received.

11. The same procedure shall apply when entries on the List expire or lose their validity. For the sake of continuity, elections may be held during the six-month period preceding the expiry or loss of validity of the current entry on the List in respect of a Party.

12. The entry on the List shall remain valid until one of the following cases arises:

- the expert concerned requests the Secretary General to delete the entry on the List;
- the Committee of Ministers finds that the expert concerned no longer has the required capacity;
- the expert concerned dies;
- the ordinary membership of the Advisory Committee of the expert concerned expires or ends in accordance with rule 16.

13. The Secretary General shall act as the depositary of the List.

### *3. Ordinary members*

#### *a. Appointment of ordinary members*

14. As long as the number of entries on the List does not exceed eighteen, each expert whose name has been entered on the List shall be appointed as an ordinary member of the Advisory Committee by the Committee of Ministers. Appointments shall follow the chronological order of the elections.

15. Once the number of entries on the List exceeds eighteen, the Committee of Ministers, shall in filling vacant seats in the Advisory Committee, give priority to appointing, in the following order, experts on the List from the Parties in respect of which no ordinary member has been appointed:

a. at two or more consecutive rounds of appointments immediately preceding the current one;

b. at the round of appointments immediately preceding the current one; followed by experts on the List from other Parties in respect of which there is currently no ordinary member.

For each of these categories, the rule shall apply that if the number of experts entitled to appointment exceeds the number of vacant seats, ordinary members shall be selected by the Committee of Ministers through the drawing of lots.

b. Term of office of ordinary members

16. The term of office of an ordinary member of the Advisory Committee shall be four years. The Committee of Ministers shall specify the exact date on which the term of office begins. No one may be appointed to serve as an ordinary member more than twice. Ordinary membership will end at an earlier date in the following cases:

- at the request of the ordinary member to the Secretary General;
- when the Committee of Ministers finds that an ordinary member no longer has the required capacity;
- when the ordinary member dies.

However, the term of office of half of the number of ordinary members as it stands two years after the commencement of work of the Advisory Committee shall be extended by two years. These members shall be identified at that time by the drawing of lots by the Committee of Ministers. They may also be re-appointed once, in accordance with the preceding paragraph.

17. In order to ensure that, as far as possible, one half of the ordinary membership of the Advisory Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent appointment, that the term or terms of office of one or more members to be appointed shall be for a period other than four years but not more than six and not less than two years.

18. An ordinary member appointed to fill a casual vacancy shall hold the seat for the remainder of the predecessor's term. Casual vacancies will be filled by experts entered onto the List in respect of the same Party, unless the Committee of Ministers decides otherwise.

#### *4. Additional members*

19. During consideration of a state report from a Party in respect of which there is no ordinary member of the Advisory Committee, the expert who is on the List in respect of that Party shall be invited to sit as an additional member. The additional member shall perform her or his functions in accordance with Rules 33 and 34.

## **II. The procedure to be followed in performing the monitoring functions**

### *1. Transmission and publicity of state reports*

20. State reports shall be transmitted by the Party to the Secretary General who will transmit them to the Committee of Ministers. The state reports shall be made public by the Council of Europe upon receipt by the Secretary General, without prejudice to the right of the State to make the report public at an earlier date.

21. The periodical basis for transmission of state-reports mentioned in Article 25, paragraph 2, of the framework Convention is set at five years, calculated from the date on which the previous report was due.

### *2. Consideration of state reports by the Advisory Committee*

22. The Committee of Ministers shall transmit the state reports to the Advisory Committee.

23. The Advisory Committee shall consider the state reports and shall transmit its opinions to the Committee of Ministers.

### *3. Consideration of state reports by the Committee of Ministers*

24. Following receipt of the opinion of the Advisory Committee, the Committee of Ministers shall consider and adopt its conclusions concerning the adequacy of the measures taken by the Contracting Party concerned to give effect to the principles of the framework Convention. It may also adopt recommendations in respect of the Party concerned, and set a time-limit for the submission of information on their implementation.



#### *4. Publicity*

25. The conclusions and recommendations of the Committee of Ministers shall be made public upon adoption.

26. The opinion of the Advisory Committee concerning the report of a Party shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless in a specific case the Committee of Ministers decides otherwise.

27. Comments of the Parties in relation to the opinion of the Advisory Committee shall be made public together with the conclusions and recommendations of the Committee of Ministers and the opinion of the Advisory Committee.

#### *5. Working methods of the Advisory Committee*

28. The Advisory Committee shall commence its work once twelve ordinary members have been appointed or at an earlier stage if the Committee of Ministers so decides and in any event not later than one year after the entry into force of the framework Convention.

29. The Advisory Committee may request additional information from the Party whose report is under consideration.

30. The Advisory Committee may receive information from sources other than state reports.

31. Unless otherwise directed by the Committee of Ministers, the Advisory Committee may invite information from other sources after notifying the Committee of Ministers of its intention to do so.

32. The Advisory Committee may hold meetings with representatives of the government whose report is being considered and shall hold a meeting if the government concerned so requests.

A specific mandate shall be obtained from the Committee of Ministers if the Advisory Committee wishes to hold meetings for the purpose of seeking information from other sources.

These meetings shall be held in closed session.

33. Additional members of the Advisory Committee shall only participate in the work of the Advisory Committee in respect of the report of the Party in respect of which they have been elected to the List.

34. Additional members shall sit in an advisory capacity; they shall not have the right to take part in a possible vote. The same shall apply to ordinary members regarding the report of the Party in respect of which they have been elected to the List.

#### *6. Ad hoc reports*

35. The Advisory Committee may invite the Committee of Ministers to request an *ad hoc* report from a Party.

#### *7. Follow-up*

36. The Advisory Committee shall be involved in the monitoring of the follow-up to the conclusions and recommendations on an *ad hoc* basis, as instructed by the Committee of Ministers.

#### *8. Rules of procedure and periodic reports*

37. The Advisory Committee shall draft its rules of procedure which shall be submitted to the Committee of Ministers for approval. The same procedure shall apply to any subsequent modification to the rules of procedure.

38. The Advisory Committee shall periodically inform the Committee of Ministers on the state of its work.

### **III. Participation in the Committee of Ministers by Parties which are not members of the Council of Europe**

39. The Committee of Ministers shall invite a representative from each non-member Party to attend the meetings of the Committee of Ministers whenever it exercises its functions under the framework Convention, without the right to participate in the adoption of decisions.

**OUTLINE FOR REPORTS**  
**to be submitted pursuant to Article 25 paragraph 1**  
**of the Framework Convention for the Protection of National Minorities**

(Adopted by the Committee of Ministers on 30 September 1998 at the 642<sup>nd</sup> meeting of the Ministers' Deputies)

1. As follows from Article 25 paragraph 1 of the Framework Convention the report is to contain full information on the legislative and other measures taken to give effect to the principles set out in the Framework Convention. The aim of this outline is to facilitate both the work of those providing the information and that of the Committee of Ministers and the Advisory Committee.

2. This outline pertains only to the first reports to be submitted by Parties following the entry into force of the Framework Convention. The report is to consist of two parts, and is to be submitted in one of the official languages of the Council of Europe as well as in the original language version. It should in its first part (Part I) contain an introduction on the way in which the Party has sought to implement the Framework Convention. This introduction should provide a coherent global overview and framework for understanding the specific information provided in the second part (Part II) of the report. Part I should therefore include:

- (a) recent general statement(s) on the policy of the State concerning the protection of national minorities;
- information on the status of international law in the domestic legal order;
- information on the unitary or federal character of the State;
- a summary overview of the relevant historical development of the country;
- relevant information on the demographic situation in the country;
- information on the existence of so-called minority-in-minority situations in certain areas;
- basic economic data such as Gross Domestic Product (GDP) and per capita income.

States are invited in this part to highlight measures, practices and policies which they consider to have worked particularly well in promoting the overall aim of the Framework Convention.

Furthermore States are requested to indicate the efforts they have made to promote awareness among the public and the relevant authorities about the Framework Convention.

States are also invited to indicate issues on which they would particularly welcome the support and advice of the Advisory Committee.

4. In Part II the report is to follow the order of the provisions of the Framework Convention. For each provision of the Framework Convention, full information on the measures adopted to ensure its implementation should be given. This information may be presented in five categories:

1. **narrative:** under this heading a short introductory description of State/government activity should be given, referring to the four categories of information mentioned below. This part should also make clear what developments have taken place over recent years, whether changes in

policy or legislation are currently anticipated and should describe any difficulties that have been encountered or problems that have arisen with the implementation of the provision concerned.

2. **legal:** under this category the text of all relevant constitutional provisions, laws, regulations, decrees, judicial decisions and provisions of bilateral treaties should be provided. It should also be indicated whether legal remedies are available and, if so, which. These texts should be included in their original language form, accompanied by a translation of the most relevant provisions in one of the official languages of the Council of Europe.

3. **State infrastructure:** under this category a clear indication of which State/government authorities have competence and/or responsibilities in the field concerned is to be given. Where applicable information should also be included on State infrastructure at local and regional level.

4. **policy:** under this category policies, measures, programmes, statements and documents from government agencies should be set out. Furthermore information is to be given on relevant public expenditure and budgetary possibilities.

5. **factual:** under this category factual information enabling an evaluation of the effectiveness in practice of the measures taken to implement the Framework Convention should be provided, such as statistics and the results of surveys. It is understood that, where complete statistics are not available, governments may supply data or estimates based on ad hoc studies, specialised or sample surveys, or other scientifically valid methods, whenever they consider the information so collected to be useful.

5. To assist with the preparation of Part II of the report, all articles of Sections I, II and III of the Framework Convention are listed in the appendix and for each article it is indicated from which of the five categories identified above information is requested. Under some provisions further specific indications are given as to the information to be supplied. These specific indications do not replace, but are to be read in addition to the general description of the categories of information requested. Under some provisions, certain categories of information appear *prima facie* not to be relevant and no information is requested in respect of them. In these cases the category appears between brackets: [.....]. However, if it is felt that the category is relevant in the context of the specific circumstances of the country, information may, of course, be provided.

6. Where appropriate, the report may make cross-reference to information provided elsewhere in the report. There is no need to provide the same information twice.

7. Reports to other international organisations may, where appropriate, be referred to and extracts from these reports may be incorporated, provided that the full report is included in the appendices to the report under the Framework Convention in one of the official languages of the Council of Europe.

8. Any supplementary information the country would like to provide may be added to the report in the form of additional appendices.

9. Should any questions arise, the national authorities preparing the report under the Framework Convention are invited to contact the Minorities Unit of the Directorate of Human Rights. (Contact: Mr Antti Korkeakivi, Council of Europe, F-67075 Strasbourg Cedex, France; tel: 33 388 412956; fax: 33 388 412793; e-mail: antti.korkeakivi@coe.fr).

## APPENDIX

### OUTLINE FOR PART II OF THE REPORT

#### Article 1

**The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.**

Information is requested from the State on its participation in and co-operation with international organisations in respect of the protection of national minorities, including a specification of the relevant international instruments to which it is party (for bilateral relations, see under Article 18). Information is also requested on how, pursuant to the rule of law, access to justice is guaranteed on issues of protection of persons belonging to national minorities.

#### Article 2

**The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.**

Parties are invited to provide any information they consider relevant.

#### Article 3

**1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.**

**2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.**

#### Paragraph 1 and 2

- narrative:

In providing information under this heading please also address the following question:

- are there any linguistic or ethnic groups, (whether they consist of citizens or of non-citizens living in the country), which are not considered a national minority? If so, please provide information on the different points of view in this respect.

- legal:

In addition to the information to be provided please address the following questions:

- is the notion of national minority defined under domestic law or is there an enumeration in law of groups which are recognised as national minorities? If so, where?

- state infrastructure

- is there a government agency responsible for collection of demographic data? If so, please give full details.

- [ policy]

- factual:

In addition to the information to be provided please address the following questions:

- to which persons in your country have the provisions of the framework Convention been applied ?
- please provide information about the numbers and the places of settlement of the persons concerned and indicate how these data are collected.

#### **Article 4**

**1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.**

**2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.**

**3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.**

##### **paragraph 1**

- narrative
- legal
- state infrastructure
- policy
- factual

##### **paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

##### **paragraph 3**

- narrative
- legal
- [ state infrastructure]
- [ policy]
- [ factual]

#### **Article 5**

**1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.**

**2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to**

**national minorities against their will and shall protect these persons from any action aimed at such assimilation.**

**paragraph 1**

- narrative
- legal

In providing information under this heading please address the following questions:

- is there a State religion in your country? If so, where is this laid down in law ?
- is there an enumeration in law of recognised religions ?
- are there one or more official languages in your country? If so, where is this laid down in law ?
- state infrastructure
- policy

In providing information under this heading please also address the following question:

- what is the policy of promotion of the conditions necessary for persons belonging to national minorities to maintain and develop their culture and how does it relate to the policy of the State in the field of culture in general?
- factual

**paragraph 2**

- narrative
- legal

In providing information under this heading please also address the following question:

- if there is legislation explicitly pertaining to a "general integration policy", please provide details.
- state infrastructure

In providing information under this heading please also address the following question:

- is there a governmental infrastructure for integration policy ?
- policy

In addition to the information to be provided please address the following question:

- is there a general integration policy in your country ? If so, please give details.
- factual

**Article 6**

**1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.**

**2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.**

**paragraph 1**

States are requested to provide information on all relations between different ethnic, linguistic,

cultural and religious communities, including evidence of inter-community relations and co-operation, as well as on attitudes and the role of civil society, including the role of the media.

- narrative
- legal
- state infrastructure
- policy
- factual

#### **paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

In providing information under this heading, please also provide statistics of reported cases and the success-rate in prosecution of acts of discrimination, hostility or violence as a result of persons' ethnic, cultural, linguistic or religious identity.

#### **Article 7**

**The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.**

Under this Article please only provide information on the freedom of assembly and the freedom of association. Information on freedom of thought, conscience and religion may be provided under Article 8 and all information on freedom of expression may be provided under Article 9.

- narrative
- legal
- state infrastructure
- policy
- factual

#### **Article 8**

**The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.**

- narrative
- legal
- state infrastructure
- policy

In providing information under this heading, please also address the following question: if there are there any religious institutions, organisations or associations that enjoy financial or other forms of direct or indirect support from the State, please provide details.

- factual



## **Article 9**

**1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.**

**2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.**

**3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.**

**4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.**

### **paragraph 1**

- narrative
- legal
- state infrastructure
- policy
- factual

### **paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

### **paragraph 3**

- narrative
- legal
- state infrastructure
- policy
- factual

### **paragraph 4**

- narrative
- legal
- state infrastructure
- policy

- factual

## **Article 10**

**1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.**

**2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.**

**3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.**

### **paragraph 1**

- narrative
- legal
- [state infrastructure]
- [policy]
- factual

### **paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

### **paragraph 3**

- narrative
- legal
- state infrastructure
- policy
- factual

## **Article 11**

**1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.**

**2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.**

**3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.**

**paragraph 1**

- narrative
- legal

In providing information under this heading, please also address the following question: Does domestic legislation provide for the possibility for the individual to maintain or to change his or her surname (patronym) and/or first names, or to revert to a former surname (patronym) and/or first names. If so, under which conditions?

- state infrastructure
- policy
- factual

**paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

**paragraph 3**

- narrative
- legal
- state infrastructure
- policy
- factual

**Article 12**

**1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.**

**2 In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.**

**3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.**

**paragraph 1**

- narrative

- legal
- state infrastructure
- policy
- factual

#### **paragraph 2**

See also Article 6 paragraph 1.

- narrative
- legal
- state infrastructure
- policy
- factual

#### **paragraph 3**

- narrative
- legal
- state infrastructure
- policy
- factual

### **Article 13**

**1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.**

**2 The exercise of this right shall not entail any financial obligation for the Parties.**

#### **paragraph 1**

- narrative
- legal
- state infrastructure
- policy
- factual

#### **paragraph 2**

- [narrative]
- [legal]
- [state infrastructure]
- [policy]
- [factual]

### **Article 14**

**1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.**

**2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those**

**minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.**

**3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.**

**paragraph 1**

- narrative
- legal
- state infrastructure
- policy
- factual

**paragraph 2**

- narrative
- legal
- state infrastructure
- policy
- factual

**paragraph 3**

- narrative
- legal
- state infrastructure
- policy
- factual

**Article 15**

**The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.**

In providing information please address the areas of cultural life, social and economic life and public affairs separately. Particularly information on institutional arrangements for participation in decision-making processes should be included (as the case may be, consultative councils, parliamentary arrangements and territorial or cultural autonomy). Please also indicate whether under certain conditions non-citizens have voting rights, and, if so, under which conditions.

- narrative
- legal
- state infrastructure
- policy
- factual

**Article 16**

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Under this article please provide information on any changes that have been made in recent years to municipal and regional and/or administrative borders as well as any changes in competence of local or regional authorities that have been implemented.

- narrative
- legal
- state infrastructure
- policy
- factual

## **Article 17**

**1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.**

**2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.**

### **paragraph 1**

- narrative
- legal
- [state infrastructure]
- policy
- factual

### **paragraph 2**

- narrative
- legal
- [state infrastructure]
- policy
- factual

## **Article 18**

**1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.**

**2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.**

### **paragraph 1**

- narrative
- legal
- state infrastructure
- policy
- factual

### **paragraph 2**

- narrative

- legal
- state infrastructure
- policy
- factual

#### **Article 19**

**The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.**

Information under this article need only be provided by Parties that have made limitations, restrictions or derogations. Where limitations, restrictions or derogations have been made information should, where applicable, also be provided under the relevant articles mentioned above.

- narrative
- legal
- state infrastructure
- policy
- factual

#### **Article 20**

**In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.**

Parties are invited to provide any information they consider relevant.

#### **Article 21**

**Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.**

Parties are invited to provide any information they consider relevant.

#### **Article 22**

**Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.**

Parties are invited to provide any information they consider relevant.

#### **Article 23**

**The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention**

**for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.**

Parties are invited to provide any information they consider relevant.

### **Article 30**

**1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.**

**2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.**

**3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.**

Please indicate any use that is made of this article.



**RULES OF PROCEDURE OF THE ADVISORY COMMITTEE  
ON THE FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES**

(Adopted by the Advisory Committee on 29 October 1998)

The Advisory Committee,

Having regard to the Framework Convention for the Protection of National Minorities (hereinafter referred to as "the framework Convention");

Pursuant to Rule 37 of the Resolution (97) 10 adopted by the Committee of Ministers on the Monitoring Arrangements under Articles 24-26 of the framework Convention;

Adopts the present Rules of Procedure, which have been approved by the Committee of Ministers on 16 December 1998 at the 653rd meeting of the Ministers' Deputies.

**ORGANISATION OF THE COMMITTEE**  
Presidency of the Committee

**Rule 1**

The Advisory Committee (hereinafter referred to as "the Committee") shall elect from among its ordinary members a President and a first and second Vice-President.

**Rule 2**

The President and Vice-Presidents shall be elected for a term of 2 years, provided that such period shall not exceed the duration of their term of office as ordinary members of the Committee. They may be re-elected.

**Rule 3**

If the President or a Vice-President, before the normal expiry of his or her term of office, ceases to be an ordinary member of the Committee or resigns his or her office of President or Vice-President, the Committee shall elect a successor for the remainder of the term of that office.

**Rule 4**

The elections of the President and Vice-Presidents shall be held separately and by secret ballot. Elections shall be by a majority of the ordinary members present.

**Rule 5**

If no ordinary member receives such a majority, a second ballot shall take place between the two candidates who have received most votes. In the case of equal voting, the longest serving ordinary member shall be elected. If the ordinary members concerned have served the same length of time in the Committee, the oldest of them shall be elected .

**Rule 6**

The President shall chair the meetings of the Committee, and perform all other functions conferred upon him or her by these Rules of Procedure or by the Committee.

#### Rule 7

The first Vice-President shall take the place of the President if the latter is unable to carry out his or her duties or if the office of the President is vacant. The second Vice-President shall replace the first Vice-President if the latter is unable to carry out his or her duties or if the office of first Vice-President is vacant. If the President and the Vice-Presidents are at the same time unable to carry out their duties or if their offices are at the same time vacant, the duties of the President shall be carried out by the longest serving ordinary member. If two or more ordinary members concerned have served the same length of time in the Committee, the oldest of them shall carry out the duties of the President.

#### Rule 8

No member of the Committee shall preside when the report of a Party in respect of which he or she was elected is being considered.

### Bureau of the Committee

#### Rule 9

The Bureau of the Committee shall consist of the President and the two Vice-Presidents.

#### Rule 10

The Bureau shall direct the work of the Committee and perform all other functions conferred upon it by these Rules of Procedure or by the Committee.

When the Committee is not in session, the Bureau may, in urgent cases, decide on the Committee's behalf. Bureau shall inform the Committee at its next meeting of any decisions which it has taken under this paragraph.

### Secretariat of the Committee

#### Rule 11

The Secretary General shall provide the Committee with the necessary staff, including a Secretary, as well as with the administrative and other services it may require.

## FUNCTIONING OF THE COMMITTEE

#### Rule 12

The official and working languages of the Committee shall be English and French.

#### Rule 13

The Committee and its Bureau shall hold such meetings as are required for the exercise of their functions.

#### Rule 14

The Committee meetings shall be convened at dates decided by the Committee. The Committee shall meet at other times by decisions of the Bureau or if at least one third of its ordinary members so request.

#### Rule 15

The Secretary shall notify the members of the Committee of the date, time and place of each Committee meeting.

#### Rule 16

Following consultations with the President, the Secretary shall transmit to the members a draft agenda simultaneously with the notification of the meeting. The agenda shall be adopted by the Committee at the beginning of each meeting.

#### Rule 17

The Secretary shall transmit to the members of the Committee the working documents for each meeting.

#### Rule 18

The Committee shall meet *in camera*, unless the Committee decides otherwise. Apart from the members of the Committee, only the designated members of the Secretariat of the Council of Europe, interpreters and persons providing technical assistance may be present at meetings held *in camera*, unless the Committee decides otherwise.

#### Rule 19

Subject to Resolution (97) 10, members of the Committee, members of the Secretariat and other persons assisting the Committee are required to maintain the confidentiality of the documents of the Committee and of the information of which they have become aware at meetings held *in camera*, unless the Committee decides otherwise.

#### Rule 20

The quorum of the Committee shall be the majority of its ordinary members.

#### Rule 21

The decisions of the Committee shall be taken by a majority of the ordinary members present, except when otherwise provided by the present Rules of Procedure.

#### Rule 22

Subject to Rule 23, each ordinary member shall have one vote.

#### Rule 23

In accordance with Rule 34 of Resolution (97) 10, additional members shall sit in an advisory capacity; they shall not have the right to take part in a possible vote. The same shall apply to an ordinary member when the report of the Party in respect of which he or she was elected is being considered.

#### Rule 24

A proposal must be submitted in writing if an ordinary member of the Committee so requests. In that case the proposal shall not be discussed until it has been circulated.

#### Rule 25

If two or more proposals relate to the same subject, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. In case of doubt as to the order, the President shall decide.

#### Rule 26

When an amendment to a proposal is moved, the amendment shall be voted on first. When two or

more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed from the original proposal and so on until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. In case of doubt as to the order, the President shall decide.

#### Rule 27

A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

#### Rule 28

During the discussion of any matter, an ordinary member may at any time raise a point of order, and the point of order shall immediately be decided upon by the President. Any appeal against the ruling of the President shall immediately be put to the vote. An ordinary member may not, in raising a point of order, speak on the substance of the matter under discussion.

#### Rule 29

Subject to Rule 28 of the present Rules of Procedure, procedural motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) suspension of the meeting;
- (b) adjournment of the meeting;
- (c) adjournment of the discussion on the item in hand;
- (d) closure of the discussion on the item in hand.

#### Rule 30

Subject to Rule 4, the Committee shall normally vote by show of hands. Upon a request of any ordinary member of the Committee, a roll-call shall be taken. It shall be called in the alphabetical order of the names of the ordinary members of the Committee, beginning with the letter 'A'. A vote shall be held by secret ballot when a request to that effect is supported by one-third of the ordinary members of the Committee.

#### Rule 31

At the end of each meeting the Secretary shall submit to the Committee for its approval a list of the decisions adopted during the meeting.

#### Rule 32

A draft report of the meetings of the Committee shall be prepared by the Secretary. The draft report shall be submitted to the Committee for approval.

#### Rule 33

If there are grounds to believe that an ordinary member no longer meets the requirements under Rule 6 of Resolution (97) 10, the Committee may, after the person in question has had an opportunity to state his or her views, decide to inform the Committee of Ministers of the matter. Such a decision shall be taken by a two-thirds majority of the ordinary members of the Committee.

## PROCEDURE CONCERNING THE CONSIDERATION OF STATE REPORTS

### Rule 34

In accordance with Article 25 of the framework Convention and Rule 23 of Resolution (97) 10, the Committee shall consider state reports transmitted to it by the Committee of Ministers and transmit its opinions to the Committee of Ministers. Such opinions shall be adopted by a majority of the ordinary members of the Committee.

### Rule 35

The Committee may set up working parties and other subsidiary bodies to consider specific questions, including state reports. The composition of subsidiary bodies and their terms of reference shall be fixed by the Committee. The Committee may also appoint rapporteurs to consider specific questions, including state reports. Subsidiary bodies and rapporteurs shall report to the Committee.

### Rule 36

The Committee may seek the assistance of outside experts or consultants.

### Rule 37

In accordance with Rule 32 of Resolution (97) 10, the Committee may hold meetings with representatives of the government whose report is being considered and shall hold a meeting if the government concerned so request.

### Rule 38

When the Committee requests, in accordance with Rule 29 of Resolution (97) 10, additional information from a Party, the Committee shall indicate in which manner and by what time limit the said information should be submitted.

### Rule 39

The Committee may, where appropriate, co-operate and exchange information with the Committee of Experts established under the European Charter for Regional or Minority Languages and other bodies of the Council of Europe with relevant expertise.

### Rule 40

At each session, the Secretariat shall notify the Committee of all cases of non-submission of state reports. In such cases the Committee may make proposals for measures to be taken.

### Rule 41

The outline for initial state reports may, when necessary, be considered by the Committee with a view to making suggestions for its improvement to the Committee of Ministers. The Committee may also suggest to the Committee of Ministers an outline for subsequent state reports to be submitted under Article 25, paragraph 3, of the framework Convention.

### Rule 42

When instructed by the Committee of Ministers, in accordance with Rule 36 of Resolution (97) 10, to participate in the monitoring of the follow-up to conclusions and recommendations, the Committee shall apply *mutatis mutandis* the procedure concerning the consideration of state reports.

## AMENDMENTS

### Rule 43

These rules may be amended by a decision taken by a majority of the ordinary members of the Committee. Such amendments are subject to the approval of the Committee of Ministers. Prior to the approval of the Committee of Ministers, amendments to these rules may be provisionally applied by the Committee.

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